

A CONSTITUTIONAL HISTORY OF INDIA

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COMPOSED
BY S. L. SIKRI

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| 3. भारतीय इतिहास का मुस्लिम युग | 13-00 |
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CONTENTS

PART I

National Development of India

(1600—1947 A.D.)

1. The East India Company (Trading Period)	1
2. Double Government in Bengal (1765—1772)	11
3. ^{but trading in} The Regulating Act, 1773	20
4. Pitt's India Act, 1784	40
5. The Charter Acts (1793—1853)	59
6. Transfer of India to the Crown	86
(Act for the Better Government of India)	
7. The Indian Councils Act, 1861	110
8. The Indian Councils Act, 1892	120
9. The Indian Councils Act, 1909 or Morley-Minto Reforms	131
10. Montagu-Chelmsford Reforms and The Government of India Act, 1919	153
11. The Government of India Act, 1935	198
12. India Wins Freedom	271
13. Partition of India and Birth of Pakistan	337

PART II

Indian National Movement

14. Indian National Movement	371
15. The Indian National Congress	383
16. Indian National Movement (1885-1919)	392
17. Indian National Movement (The Gandhian Era)	424
18. Leaders of Modern India	469

PART III

Constitution of Indian Republic

19. Our New Constitution (Introduction and outline)	527
20. The Making of the Constitution	532

The Queen acceded to their prayer and granted them a charter on December 31, 1600 incorporating them under the name of "The Governor and Company of Merchants of London trading into the East Indies."

The Constitution of the Company → → → → →

The royal charter granted to the Company laid down its constitution, which fell within the type of 'regulated companies' as opposed to 'joint stock companies'. The members of the Company were subject to certain regulations and enjoyed some privileges, but traded on separate capitals. They subscribed funds for every new expedition to trade in the East and divided among themselves the profits accruing from their enterprise. One voyage arranged had no relation with the other and the profits of the subscribers varied in proportion to their investments.

The East India Company, in a way, differed from a purely regulated concern, as it never allowed individual initiative to its members. No member of it could trade separately on his own account. Each of them had to join the other subscribers in making investment for a particular voyage arranged by its Directors who were then known as "Committees". Hence the East India Company even as a regulated concern had in its constitution the germs of the later Joint Stock Company.

The management of the Company's business was vested in a Governor and twenty-four 'Committees'. The 'Committees' were not bodies but individuals or 'Committee-men' who later on became the 'Directors' and their assembly the 'Court of Directors'. The first Governor of the Company, Mr. Thomas Smythe, and its twenty-four 'Committees' were named in the charter, but afterwards they were to be annually elected by the subscribers. The Governor and the Directors were entrusted with the task of directing the Company's voyages, of making provision for shipping and merchandise and of organising the sale of goods brought to England. The assembly of the subscribers was known as 'General Court'. It subsequently developed into the 'Court of Proprietors'.

Membership of the Company was accorded in the charter to those who had purchased a share in the first voyage. It was also subsequently granted to such persons as took up shares in the later voyages. But, besides this common mode of securing the

membership, it could also be secured through service or apprenticeship or on the payment of an entrance fee. The sons of the members on reaching the age of 21 could secure membership as a matter of right. The number of the subscribers in the first voyage of the Company was 217 in all.

The charter also granted some powers and privileges to the Company. It was to enjoy the exclusive privilege of trading between the two geographical limits—the Cape of Good Hope and the Straits of Magellan—for a period of fifteen years. It could make by-laws, orders, ordinances etc. necessitated for the good government of the Company and its servants and to punish offences against them by fine and imprisonment. But these laws and punishments were required to be reasonable and consistent with the laws, statutes and customs of the realm (England).

I—CHEQUERED GROWTH OF THE COMPANY

(Grants from the British Crown and Parliament)

During the period 1600—1765, the East India Company were primarily traders. It did not wield any political influence. For the extension of its powers and commercial activities, it always looked to the British Crown and the Parliament. It also sought favours of the Indian rulers. As good luck would have it, the East India Company, except for a few intervals, continued to enjoy the patronage of both the Indian rulers and the British Parliament. In consequence, it made rapid progress till traders became rulers.

James I extends patronage

Elizabeth died in 1603. After her death James I became the ruler of England. Much in the interests of East India Company, the Stuart King first renewed Elizabeth's charter and then in 1609 made it perpetual (subject to revocation on three-year notice). Six years later, he empowered the Company to enforce martial law for the maintenance of discipline on long voyages. In 1623 the Company's power of controlling and punishing its servants was further extended. It was authorised to grant commissions to the Presidents and Chief Officers for the punishment of offences committed by the Company's servants on land.

Difficulties under Charles I

During the reign of Charles I, the East India Company had to face the Dutch opposition in the East Indies. As a result of it, the

English were forcibly driven out of the island of Pulo-Run in 1621. Their profits from the East Indies considerably decreased. Worse still, the Dutch massacred a number of Englishmen in Amboyna on the charge of conspiracy against their government.* The British nation felt this loss very bitterly but their King did nothing to rectify the wrong which had been done to the Company. Rather, he dealt a blow to the Company and its trade by granting a licence to Sir William Courten to trade with the East Indies. This brought the Courten Association or Assade Company into existence. Though the Association failed to make huge profits from its trade, yet it put the Company in many difficulties.

Commonwealth and the Company

The fortunes of the Company, however, revived under the Commonwealth. Oliver Cromwell took vigorous steps to redress its grievances. He also relieved it of its many difficulties. By the Treaty of Westminster (1654) he exacted £ 85,000 from the Dutch as an indemnity for the infamous massacre of 1623. This sum, was in addition to £ 3615 already paid to the heirs of the victims. Of this sum, Cromwell took £ 50,000 as a loan to defray the expenses of the war, but this was never paid back to the Company. Cromwell, thus, anticipated the policy (subsequently adopted by Montagu and his successors) of compelling the Company to grant public loans as a price for their privileges. In 1657, Cromwell granted a charter which provided for the union of Courten Association with the Company.

Restoration and unprecedented prosperity

Cromwell died in 1657. His son and successor Richard Cromwell failed to manage the affairs of the state. The nation called back their king Charles II from exile and restored him to the British throne. With the restoration came a welcome change in the Company's fortunes and it witnessed an unprecedented prosperity during the next twenty years. Charles II extended a never-failing patronage to the Company and granted it as many as five charters

*This massacre of Amboyna led to an outburst of indignation in England. Commissioners were appointed by the two Governments to investigate the matter, with the result that the Dutch had to pay £3615 as compensation to the heirs of the victims. This massacre in a way proved a turning point in the fortunes of the English in the East. Driven from the Spanish island they gave increased attention to their trade in India where far better luck was in store for them.

between 1661 and 1683. Consequently, the Company's stock steadily rose in price ; it secured the rights to coin money, erect fortification, exercise jurisdiction over English subjects residing in the East, make peace or war and form alliances with non-Christian peoples.

The first amongst the charters of Charles II's reign was that of April, 1661. By this charter the Company was reorganised on the joint-stock basis. It was given 'power and command' over its fortresses including the authority to appoint governors and other officers for their administration. The Company also got the power to govern its employees in a legal and reasonable manner and to punish them for misdemeanour and disobedience. Besides, the Governor in Council of each factory in India were authorised to judge all persons under them in all cases, civil and criminal, according to English law. The Company had, in addition, the authority to erect fortresses and garrison them, to send ships of war, men and munition to their settlements, and to make war and peace with non-Christian powers in the East.

In March 1668, Charles II granted another charter to the East India Company. By it he transferred the island of Bombay (which he had got from the Portuguese as a part of the dowry of his wife, Catherine of Braganze) to the Company at a rent of ten pounds a year and authorised it to make laws and ordinances for the good government of Bombay, to exercise judicial powers over its inhabitants and to exercise martial law in times of rebellion and war. All this marked a significant stage in the transition of the Company from a trading association to a territorial sovereign invested with power of civil and military government. By the Charter of October, 1676 the Company was granted the power of coining money at Bombay to be called rupees, pice or such other names as the Company might think proper.

The next charter was granted to the Company in 1683. It empowered the Company (i) to declare war and make peace with any of the heathen nations of Asia, Africa and America within the charter limits, (ii) to raise armies for the defence of their settlements and (iii) to exercise martial law in times of rebellion or war. The charter also provided for the establishment of an admiralty court consisting of a judge learned in civil law and two assistants appointed by the Company. Under this provision of the Charter Dr. St. John was appointed the judge of the Court at Surat.

James II, who succeeded his brother Charles II in 1685, was also very liberal to the Company. About a year after his accession, he granted the Company a charter authorising it to appoint admirals and other sea-officers in any of its ships within the charter limits, to raise naval forces and to exercise martial law in time of war. The charter also gave to the Company the general powers of coining in its forts any species of money usually coined by the Indian princes. In 1687, the Company got the power of establishing a municipality and Mayor's court at Madras. The permission to extend constitutional government in Madras was very significant. It marked the development of the territorial character of the Company's rule in Madras and also signified the readiness of the Crown to accord the fullest power to the Company.*

The dominant influence of Sir Josiah Child, a director of the Company, also went a long way in strengthening its position. According to S. C. Ilbert, "It was he who converted the Company from a Whig to a Tory Association ; it was he who induced James II to become a subscriber to its capital ; and it was he who lavishly bribed to counteract the growing influence of its rivals."†

Difficulties at home and abroad

Towards the close of the Restoration period the Company came into conflict with the Mughal Government. This war cost it a heavy financial loss and also weakened its authority and position. It had to conclude a humiliating peace with the Mughal Government in 1690.

In England also the prospects of the Company were shattered by the Glorious Revolution of 1688. The Whigs, who emerged into prominence and power, were not inclined to favour the Company. The influence of Sir Josiah Child considerably declined and the hopes of those merchants, who were determined to break the Company's monopoly, rose high. They formed themselves into an association which came to be known as the New or the English Company. The New Company commenced an active struggle against the Old Company and put it in various difficulties.

The Old Company had to face a peculiar crisis in 1691. The majority in the House of Commons decided in favour of remodelling the Old Company and incorporating it with the New

*Keith, A.B. : *A Constitutional History of India*, P. 11.

†Ilbert, S.C. : *The Government of India*, P. 35.

Company. The Parliament and the King then endeavoured to persuade the Old Company to admit new members. But Sir Josiah Child refused to accept the terms offered to it. The House of Commons, thereupon, requested the Crown to give three years' notice to the Old Company terminating its privileges and issue a charter to the New Company. Far from being intimidated, Sir Josiah Child offered lavish gifts (of the value of more than £80,000) to the Ministers and, thus, procured in 1693 a new charter for the Old Company.

The charter of 1693 confirmed the existing privileges of the Old Company subject to its acceptance of such further regulations as might be imposed on it within a year. The supplementary charter of November, 1693 effected important changes in the Company's constitution. It opened the way to wide increase of its membership by adding £744,000 to the capital and forbidding any individual to subscribe more than £10,000. It also made the rule of giving one vote for each £1,000 subscribed. This regulation was meant to prevent the gathering of voting power in the hands of a clique. Now no member or shareholder could have more than ten votes. The qualification of the Governor and Deputy Governor was fixed at £2000, that of each Committee (Director) at £1,000. A subsequent charter of 1698 reduced the voting qualification in the General Court to £500, limited the number of votes which a member could exercise to 5 and raised the qualification of a Committee to £2,000.

Union of the Old and New Companies, 1708

Though under the new charters provision was made for the admission of new members, yet it did not satisfy the rivals of the Company. The New Company, in particular, continued to attack its commercial monopoly. To make matters worse, the House of Commons passed a resolution that 'all subjects of England had equal right to trade to the East Indies unless prohibited by the Act of Parliament.' This further sharpened the rivalry of the two companies and they entered in a ruinous competition. Montagu, the Chancellor of Exchequer, took advantage of the situation. He borrowed huge sums from both the companies to extricate the state from its financial difficulties. The Old Company offered the state a loan of £700,000 at 4 per cent in return for confirmation of its privileges by the Act of Parliament. The New Company also lent

£200,000 at 8% on being granted some concessions with regard to trade with India.

The competition between the two companies soon threatened the state with serious complications. It was also likely to have adverse effects on the trade of the companies. To avert this unhappy situation, an agreement was arrived at by the two companies. According to this, the trade of the two companies was to be carried on jointly in the name of 'The United Company of Merchants of England Trading in the East Indies'. by 24 managers, half elected by either company.

Extension of United Company's privileges (1708—1758)

The fifty years following the union of the companies were marked by the extension of the United Company's privileges. In 1709, its managers became Directors under the first charter granted to it by Queen Anne. The Acts passed in 1711, 1730 and 1744 extended the duration of its privileges to 1780. In return the Company had to advance more money to the State and to reduce interest on the existing loans. In 1709, a Royal Charter was granted establishing or reconstituting municipalities at Madras, Bombay and Calcutta. Two subsequent charters (1757, 1758) regulated the distribution of booty and the cession of territory. In 1758 the Company was granted the power to cede, restore or dispose of any fortress, district or territory acquired by conquest from any Indian prince or government. But in case of territories acquired from the subjects of any European power, the Company could not exercise these rights without the special licence of the Crown. Thus, the British Crown and Parliament liberally patronised the East India Company during 1600—1757 and strengthened its position by the grant of various charters.

II—GRANTS FROM THE GREAT MUGHALS and OTHER NATIVE RULERS

In addition to the grants received from the British Crown and the Parliament during 1600—1757, the Company also got some valuable concessions from the Indian rulers. These concessions too considerably strengthened its position.

(a) Acquisition of Madras

The site of Madras was procured by the Company in 1639 from the Raja of Chandragiri, with the permission to fortify it, to coin money and to govern it under certain conditions. In 1672,

Madras came wholly under the British control, and no local Indian authority was left there. The sovereignty of the Mughal authority over Madras was, however, formally expressed in the payment by the Company of a *quit rent* and in minting a particular pattern of rupee bearing the stamp or superscription of the suzerain power. In 1752, when the Nawab of Carnatic (the local representative of the declining Mughal Empire) renounced the *quit rent*, the Company's authority in the town of Madras became absolute.

(b) Settlement of Calcutta

On the conclusion of peace with the Mughal Government in 1690, the Company was permitted to establish a factory at Sutanati, the site of the future Calcutta. Six years later this factory was fortified. In 1698, the Company purchased the *Zamindari* right (*i.e.*, the right to collect the revenue and exercise civil jurisdiction) of the villages of Sutanati, Kalikata and Govindpur. The effort of John Surman to acquire these villages in the term of imperial *firman* was, however, frustrated by the local Governor of Bengal.

In 1757, Siraj-ud-Daula, the Nawab of Bengal, confirmed by a formal treaty the privileges of the Company and permitted it to fortify Calcutta. This was followed by the political developments like battles of Plassy (1757) and Buxar (1764) which considerably extended and consolidated the territorial power of the Company.

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3. *P.E. Roberts* : History of British India.
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CHAPTER 2

Double Government in Bengal (1765—1772)

After having established itself as a trading corporation in India, the East India Company began to take interest in the politics of our country. This policy of its servants brought it into conflict with the local rulers. The first Indian ruler to come into clash with the Company was Siraj-ud-Daula, the Nawab of Bengal. Infuriated at the defiant attitude of British authorities in Calcutta, he attacked them suddenly and put them to rout. But later on he was defeated at Plassey (1757) by the combined forces of the Company and the Indian renegades who conspired against him. This was practically the beginning of the political conquest of India. As a result of this victory, the English became the king-makers in Bengal and began to play the game of installing and dethroning the puppet Nawabs at their will.

A few days after the victory of Plassey, Lord Clive established his own nominee Mir Jaffar as Nawab of Bengal. Mir Jaffar had been the commander-in-chief of Siraj-ud-Daula's forces and had practised 'circumspect treachery' against his master in the battle of Plassey. On his accession to the *Masnad*, this grateful man distributed large sums of money among his benefactors. He also granted twenty-four *parganas* to the Company. But he soon discovered that it was not easy for him to run the administration,

for the calls upon the finances of the province assumed enormous proportions. The Nawab was compelled to meet the irregular but exorbitant and unending demands of individual servants of the Company. The Directors and the British Government itself stretched their hands to grasp as much as they could. Money was also needed for the expenses of his government. All this impaired the finances of the province and undermined its economic life. Mir Jaffar was, in consequence, ousted by the English in favour of his son-in-law Mir Kasim in October, 1760*.

Mir Kasim also began his career by heavily bribing the Company's leading servants†. He ceded, in addition, the districts of Burdwan, Midnapur and Chittagong to the Company. But he refused to reconcile himself to the position of a king in a pack of cards. He was a competent and determined person. He soon took measures to check the unlawful use of the trading privileges by the Company's servants. His free trade order brought him into conflict with the Company and he suffered a defeat at the Battle of Buxar (1764). The titular Mughal Emperor Shah Alam and the ruler of Oudh were also amongst the vanquished.

The news of these uncommon happenings in India alarmed the Directors of the Company in London. They sent out Lord Clive a second time to reform the Company's government and root out the abuses inherent in its affairs. In view of the difficult task ahead, Lord Clive was armed with very wide powers. He was given full freedom to deal with the situation in Bengal in any way he deemed proper.

On his arrival in India, Lord Clive found the province of Bengal in a chaotic condition. Luxury, rapacity and want of principle were prevalent in every sphere. There was nothing that bore the form or appearance of orderly administration. Every servant of the Company, from the senior-most official down to the writer, was corrupt and demoralised. Clive was shocked to see this state of affairs and could not help bemoaning ; "Alas, how is the English name sunk ! I could not avoid paying tribute of a

*Mir Jaffar was only a golden sack in which they (Company's servants) could dip their hands at pleasure. When the sack was found empty, they set him aside in favour of Mir Kasim.

†For the assistance rendered to Mir Kasim, President Vansittart received £50,000, Holwell £ 27,000 and the members of the Council sums ranging from £ 10,000 to £ 25,000.

few tears to the departed and lost fame of the nation." To remedy these evils of obnoxious kind, Lord Clive carried out a number of reforms in the civil and military administration. He also made a significant settlement with the titular Mughal ruler Shah Alam. This settlement was the first step in the evolution of his 'Dual System'.

I—EVOLUTION OF DUAL SYSTEM

Settlement with Shah Alam : Grant of Dewani

The frequent revolutions in Bengal had impressed upon Clive the necessity of taking some steps to put to an end 'the perpetual struggle for superiority between the Nawab and the Company's servants'. He had written to Directors from Madras (on his way to Bengal) : "We must indeed become Nawabs ourselves in fact, if not in name ; perhaps totally so without disguise ; but on this subject I cannot be certain until my arrival in Bengal."

On reaching Bengal he found the situation quite favourable for his plan. The Emperor Shah Alam, who was then the nominal ruler of India, was in a position of dependence on the Company. Rather he was a suppliant for the British favour. Lord Clive took advantage of the situation and secured from him (Shah Alam) the Dewani of Bengal on the regular payment of a sum of 26 lacs of rupees every year*. As a result of this grant from the Mughal Emperor the entire revenue and financial administration passed into the hands of the Company. Thus, the East India Company, besides being a trading concern, became an administrative body as well.

The grant of Dewani itself was meaningless, for Bengal was independent of the Emperor, and the Emperor himself was a fugitive. But despite this, Clive was pleased to obtain it. For he knew it well that the English had the strength to enforce this right and the Nawab of Bengal was powerless to resist. Moreover, the grant of Dewani gave a colour of legality to the Company's transaction, for Shah Alam was theoretically and legally the Emperor. The formal recognition of the Company's status as Dewan of the province was bound to carry weight not only with the Indian people but also with the rival European

**Dewani* :—The term Dewani is derived from the word Dewan. The Dewan under the Mughals was a provincial officer entrusted with the duty of collecting the revenue and administering civil justice. Hence Dewani meant the right to collect revenue and administer justice in civil cases.

merchants settled in the country. K. V. Punnaiah writes that the Dewani was, in fact, a fiction which Clive conjured up to legalize and regularize the position of the Company as the *de facto* power in the country*.

Acquisition of Nizamat (February, 1765)

With the acquisition of Dewani in 1765, the Company became the Dewan of Bengal. But the Nizamat (*i.e.* the administration of the military affairs and criminal justice) of the province remained with the Nawab. On the death of Mir Jaffar in February 1765, the Nizamat was also transferred to the Company by his successor Najam-un-Daulah. Thus the Company obtained both the Nizamat and the Dewani of the province and became, to all intents and purposes, the sovereign of a rich and potent kingdom.

Though the Company secured the Nizamet and the Dewani of the province, yet it refused to undertake the administrative responsibilities inherent in them. The actual work of administration was, therefore, left in the hands of the Nawab who was to get Rs. 53 lacs from the Company every year to run the government. *Thus came into existence the celebrated dual government of Clive under which the English wielded the real power but evaded the responsibility for administration and kept up a show of subservience to the Nawab for no other reasons than sheer expediency and self-interest. The Nawab, on the other hand, was the ostensible source of power; everything was done in his name; his native officials worked in all branches of government, but actually the Nawab was a pensioner of the State, a rubber stamp at the disposal of the authorities at Calcutta.*

Why did Clive avoid the responsibilities of government ?

Though the Dewani implied the assumption of a fair portion of administrative jurisdiction, yet Clive was unwilling to accept the responsibilities and obligations implicit in it. His main considerations, as analysed by Dr. Chatterji, were the following :—

First, Clive apprehended that a hasty assumption of public authority would give umbrage to the other European nations, and thereby embarrass England's position from European point of view. *Secondly*, the Company's position in England itself was not secure, and it was deemed politic to guard it against all possible

*Punnaiah K.V. : *The Constitutional History of India*, P. 16.

chances of parliamentary intervention in its affairs. *Thirdly*, the authorities did not have at their disposal an adequate number of trained and competent English officials who could be called upon to fulfil the obligations of the Dewani in spirit and the letter. *Fourthly*, an open assumption of public power was dangerous also from the Indian point of view, for such a step might cause displeasure both in and outside Bengal. *Fifthly*, it was considered more economical to leave the actual work of administration in the hands of the Nawab's officials than to place the whole responsibility on the shoulders of the Company's own servants. *Finally*, the plan of dual system promised to save a huge sum to finance the Company's China trade, provide for its investments, relieve the wants of other Presidencies, and pay off the Company's bonds.

In their letters to the Directors of the East India Company, Lord Clive and his Select Committee explained at length the advantages which they hoped to derive from their plan of dual government. They held that under the new arrangements (i) revolutions would no longer be possible in Bengal, for the means of effecting them would in future be wanting to the Nawab, (ii) the possessions and influence of the Company would be rendered permanent and secure, (iii) the Company would no longer depend for the support of their military establishment on the Nawab's bounty, (iv) the Nawab henceforth would have nothing but the name and shadow of authority, and he could no longer answer the expectations of the vassal or mercenary out of his insufficient stipend* (v) the surplus revenues would be sufficient to meet the various kinds of Company's expenses and demands, (vi) the abuses inevitably resulting from the assumption of public authority would be effectually obviated.

II—THE WORKING OF THE DUAL GOVERNMENT

(Its Bad Effects)

The double government established by Clive was a selfish contrivance for enjoying the spoils of the office, without taking over its fundamental obligations. It was also an anomalous plan under which responsibility was carefully separated from power. Hence, soon after Clive's departure from India in 1767, the tone of

*The annual grant of Rs. 53 lacs was hardly sufficient for his household expenses and for the support of his dignity.

administration considerably deteriorated and people began to suffer on account of the evil effects of the system. According to Dr Chatterji, "The system which Clive initiated was a perverted organisation. It rendered the situation still more chaotic and led to a period of oppression the like of which is unparalleled in the history of the Province."*

It produced masterless confusion in Bengal

Under the dual government that Clive introduced, the Nawab was saddled with responsibility but he had no power. The Company, on the other hand, had power but disowned responsibility of administration. This illogical and unworkable arrangement could not but produce anarchy and confusion. The magistracy, the police, the revenue officials all vied with one another in misgovernment and made the lives of the people very miserable. There was a complete breakdown of the internal administration. The villainy of the Zamindars and the rapaciousness of the Nawab's officials and the Company's servants knew no bounds : and the peasants, weavers and merchants were intimidated and fleeced to the utmost. The people were left virtually without appeal, and many were compelled to leave their hearths and homes to become vagrants and free booters. The country was, thus, reduced to a state of miserable desolation. To quote K.M. Panikkar, "At no period in the long history of India including the reigns of Torman and Mohammad Tuglaq did the people of any province suffer so great a misery as the people of Bengal did between 1765 and 1772†

It undermined the military power of the Nawab

Under the regulations of the Dewani administration (as framed by the Select Committee), the Company undertook the defence of the province of Bengal, and it alone possessed the forces for the purpose. The Nawab was not allowed to maintain a regular army. For, it was feared that he would easily raise money with the help of the army and then think of regaining his sovereignty. He was, however, allowed to keep only such number of soldiers as the Company should deem necessary for the business of the revenue collection and for the support of his dignity. As a result of this arrangement, the Nawab's military power was totally undermined.

*Chatterji Nandlal : *Clive : as an administrator*, P.1.

†Panikkar K.M. : *A Survey of Indian History*, P.214.

It reduced the peasantry to a very miserable condition

The peasants of Bengal were worst hit by Clive's dual system. Apart from the continued demand for more revenues, they were subjected to arbitrary assessment. The land revenue was collected with utmost strictness, and there were many cases of over-assessment. Worse still, the *Amils* had no connection or natural interest in the welfare of the peasants and squeezed from them as much revenue as they could. As there were no facilities for appeal for the tenants, they not unoften deserted their lands in despair. Mr. Becher, the Resident of the Company at Murshidabad, aptly observed : "Since the accession of the Company to the Dewani the condition of the people of this country has been worse than it was before.....the fine country, which flourished under the most despotic and arbitrary government, is verging towards its ruin."*

It gave a setback to the judicial administration

Under the dual government, the machinery of law and justice lost its former efficiency and was reduced to a deplorable condition. This was due to various factors. First, the officers of justice received their appointments not on merit, but usually as a matter of official favour. Secondly, they were not paid fixed salaries. They derived their emoluments from fines. Thirdly, there was no demarcation between the jurisdiction of the Nizamat and the Dewani as existed in the Mughal period. Worse still, the Company strictly enjoined upon its servants not to interfere into the judicial administration, while the Nawab did not have the power to enforce law and justice. In consequence, there was corruption and miscarriage of justice. In the words of a contemporary chronicler, "Justice was not impartially enforced in all cases, as the decision of the judges was in most cases a corrupt bargain with the highest bidder..... On receiving a suitable fee, the Qazi could always turn right into wrong and injustice into justice".

It encouraged private trade at the expense of the Indians

During the period of double government, the Company's servants recklessly carried on inland trade to fill their coffers. They freely misused the Company's *Dustucks* (free passes) to seek exemption from internal duties and grasped nearly the whole of

*Becher's letter to the Directors of the Company : *Banerjee A. C. : Indian Constitutional Documents*, Vol I. P. 36.

the country's inland trade. Lord Clive himself admitted that the Company's servants and their Indian *Gumastahs* traded not as merchants, but as sovereigns. They had taken the bread out of the mouths of thousands and thousands of merchants, who used formerly to carry on the trade, and who were now reduced to beggary. Apart from the Indian merchants who starved for want of those accustomed profits (which were now monopolised by the Company's servants) the common people also suffered on account of the cruelty and high-handedness of the *gumastahs*. The *gumastahs* forced the poor ryots to purchase goods at abnormally inflated prices and fleeced and tormented them in innumerable other ways.

It led to decrease in the Company's income

As a result of the disorder which prevailed in Bengal, the revenues from the province considerably decreased. In 1765, the Home Government had estimated the revenues of Bengal at £ 3,600,000 per annum. It was also expected that by proper management this amount might rise to over six millions. But under the ridiculous plan of double government, the revenues of the Company were considerably exhausted by plunder and oppression. Mr. Bolts, who was distressed to see this state of affairs, wrote ; "While the nation is gazing after the fruit, the Company and their substitutes are suffered to the rooting up the tree." Besides, the Company's policy of auctioning the land to the highest bidder also had adverse effects on its income, for under these arrangements no improvement of the soil could possibly be effected.))

III - END OF THE DUAL GOVERNMENT

The dual government established by Clive in 1765 remained in force for about seven years. On account of the divided and complicated authority the country groaned under the worst type of evils. The weak and inefficient administration of Verelst and Cartier (the Governors of Bengal from 1767—1772 A.D) added to the general affliction. The famine and plague which broke out in 1769--71 took a heavy toll of lives. The Directors could not afford to be indifferent to the sufferings of the people. They resolved ere long to put to an end the dual administration. With this object in view, they appointed Warren Hastings as Governor of Bengal who abolished the dual system in 1772.

The English writers like Dodwell and Malcolm have greatly praised Clive's dual system. They have applauded it as an act of Clive's statesmanship, for it met the exigencies for which it was devised. But, as a matter of fact, the system which he laid down and the course which he followed were characterised by a short-sighted opportunism which reveals his failure to rise to the height of a statesman.

FURTHER READING

1. *N. L. Chatterjee* : Clive : As An Administrator.
2. *H.H. Dodwell* : Dupleix and Clive
3. *P.E. Roberts* : India.
4. *Jones* : Warren Hastings in Bengal.
5. *Mill* : History of British India.
6. *Kaye* : The Administration of the East India Company.
7. *Malcolm* : The Life of Robert Clive.
8. *Dutt* : History of the Bengal Subah.
9. *Forrest* : The Life of Lord Clive.
10. *C.H. Philips* : (i) The East India Company (1784—1834,) (ii) India.
11. *P. Spear* : (i) India—(ii) History of India.
12. *P.E. Roberts* : History of British India.
13. *H. H. Dodwell* ; The Cambridge History of India Vol. V.
14. *Ram Gopal* : How British occupied Bengal.
15. *V. B. Kulkarni* : British Dominions in India and After.

Chandrasekar

CHAPTER 3

The Regulating Act, 1773

(The Regulating Act was passed by Lord North's Government in 1773. It was designed to remove the evils inherent in the Company's constitution and to give an orderly and efficient government to its territories in India.) This object of the Act was made explicit by Lord North himself in these significant words : "Every article in it is framed with a view to the placing the affairs of the Company on a solid, clear and decisive establishment".* The Act also provided the basis of the Anglo-Indian Constitution.

I—CIRCUMSTANCES FAVOURING ITS ENACTMENT

With the acquisition of 'Dewani' in 1765, the affairs of the East India Company became a subject of considerable interest in England. The authorities at home grew anxious to learn how matters were actually going on in India. The subsequent inquiries into the Company's affairs by the Parliamentary Committees drove home the inference that the Company was unequal to its task. There was also the gradual growth of a feeling that the independence of the Company must yield to the supremacy of the

*Lord North's speech on the East India Company Bill, 1773 (May 18, 1773)

Parliament. { In consequence, a constitutional measure was enacted called Lord North's Regulating Act of 1773. } A brief account of the factors and forces responsible for this parliamentary legislation may be studied as under :—

(a) Company's territorial sovereignty and constitutional anomaly

The East India Company was originally a trading corporation. It entertained no ambitious schemes of territorial conquests and annexations. But as a result of the battles of Plassey (1757) and Buxar (1764) it established its *de facto* rule in Bengal, Bihar and Orissa and thereby became a territorial power. This change in its position was quite significant. It brought into prominence the vital question of its relation to the British Crown and Parliament. According to English law no subject could acquire territories save for his sovereign. The Company's position thus became anomalous, particularly because it pleaded to have obtained only a right to collect the revenue of the said territories as 'Dewan' of the Mughal Emperor. The Government was also faced with a difficult situation of which there seemed only two broad solutions : either the Crown should bring the territorial possessions of the Company under its direct control or the Company be left completely untouched with all its powers and privileges. The first solution was thought to be hardly desirable, for it was opposed to the eighteenth century tradition of sacredness of property. Besides, the abolition of the titular sovereignty of the Mughal Emperor might involve the Government in dangerous complications. To leave the Company free of state control was also not advisable. There seemed a danger not only that misgovernment in India might tarnish the name of Great Britain as an imperial state but that the Indian interests in England, supported by huge revenues and corrupt Parliamentary influence, might gain a preponderating and improper power in home affairs.* Under the circumstances, the regulation of the Company's affairs by a constitutional measure asserting state control over its activities and administration was considered to be the best possible solution.

(b) Double Government and administrative confusion

The double government established by Clive in Bengal had produced a masterless confusion. The magistracy, the police, the revenue officials...vied one another in misgovernment ; there

* Cambridge History of India : Vol. V. P. 183.

was no positive law and there was very little justice in the country.* the evils of private trade also raged furiously and cases of plunder were not uncommon. On account of anarchy and abuse of power the people were victims of unknown misery and oppression. Mr. Verelst, who succeeded Lord Clive as governor, expressed dissatisfaction with the dual system and bemoaned the inhuman conditions prevailing in the province. The British Parliament could not afford to be indifferent to the state of affairs, particularly when the contemporary statesmen saw in the Company's activities a serious risk of a great empire being created and ruled by English men outside the sphere and control of the British cabinet.

↙ Apart from this administrative anarchy and confusion, the governments of Bombay, Bengal and Madras were independent of one another. There was no effective co-ordination in their activities and they made war and peace at their own discretion. Their impolitic measures at times drove the authorities into serious complications and brought them even disgrace and disaster. All this gradually became intolerable for the British Government which found the remedy of these evils in state interposition.

(c) Unpopularity of 'English Nabobs'

Since the Company had assumed the 'Dewani' of Bengal, a great change had come in the attitude of its servants who were nicknamed as 'English Nabobs.' They no longer feared the authority of the Nawab and traded as sovereign. They also indulged in various malpractices and employed all means, fair and foul, to fill their coffers. To quote C.H. Philips 'The Company's servants came to India, not for their health, but to make fortunes. And most of them naturally enough were more interested in their own private trade than in the Company's good name and they seized their financial opportunities'. They were so cruelly and shamelessly greedy, writes G.N. Singh, that they made capital out of poor people's afflictions and utilised famine conditions for their private lucre†. Worse still, on their return to England, these 'English' Nabobs' recklessly spent their ill-gotten wealth to gain political power. As a result of their extravagance, the prices of all things, from fresh eggs to rotten boroughs, considerably shot up. According to Thomas Macaulay, "The

*Lyall : *British Dominion in India* : P. 120

†During the famine of 1770, many of the Company's servants were accused of making large profits by buying up rice and retailing it at high prices.

human mind was horror-struck at the way in which they got the money, the thrifty at the way in which they spent it"* . Their riches and extravagance excited the jealousy of not only those among whom they lived but also of the (English ruling classes. For, they bought their way and that of their friends into Parliament. The jealousy and alarm, which the 'English Nabobs' aroused (because of their enormous wealth, unscrupulous ways and rising political power) made them very unpopular. And the public opinion in England insistently demanded the intervention of the Government in the Company's affairs.

(d) Evils in the administrative set-up of the Company in England

The entire operation of the Company in England was in the hands of two administrative organizations : the Court of Proprietors and the Court of Directors. There were in all twenty-four Directors who were annually elected by the Court of Proprietors. Any shareholder who held stock worth 500 pounds for six months before the date of election was a voter for the Directors. Since the post of the Director was a coveted one (as it gave influence in the disposal of the Company's patronage) there was often a scramble to purchase enough shares to get oneself elected to the Court of Directors. (The Company's servants, who returned home from India with enormous wealth, had worsened the situation. They lavishly spent their ill-gotten money to get themselves elected to the Court of Proprietors. Thus, there arose the evil of 'trafficking in votes'. Besides, the votes in the Court of Proprietors were manipulated so as to shield the evil deeds of the Company's servants. These basic defects in the Company's constitution could no longer escape the notice of the Government which took in the Regulating Act of 1773 a step to do away with the unhealthy practices.

(e) Financial difficulties of the Company

The acquisition of Dewani by the Company in 1765 had caused an uncommon joy in the hearts of its proprietors. They thought that they had got an inexhaustible mine of riches. Clive in 1765 estimated the total revenue of Bengal at £4,000,000, and the net income of the Company at £1,650,000. Dazzled by the bright prospects of income, the Court of Proprietors raised the dividend from 6% to 10% in 1766 and to 12½% in the next year. People recklessly gambled in East India stock both for its high dividend and the

**Parliamentary History* : XVII. P. 889

influence which it gave them in the disposal of the Company's patronage. The stock of the Company went upto 267.

The Government also became anxious to share the huge profits of the East India Company as it saw in it a means of relieving the people of England of some of their burden. In consequence, there started a long bargaining discussion between the Government and the Company which ended in the Act of 1767. As settled by this Act, the Company was to pay the Exchequer a sum of £ 400,000 per annum for the privilege of retaining its territorial possessions and revenues. Since the Company was already paying huge sums of money as tributes and pensions to the Indian rulers, the fat dividend and the Parliamentary charge soon drove it into financial difficulties. Its condition was made worse by the First Mysore War which brought to it nothing but improverishment. The famine that visited Bengal in 1770 also hit its revenues. Thus, by the year 1772 the Company approached the state of bankruptcy and needed huge funds to make its payments. The Bank of England, which had lent it money many a time, now refused to advance more loan. The Company, thereupon, applied to the Government for a loan of one million pounds. The Government could not afford to connive at the situation because the disaster of South Sea Bubble had not yet scarred upon their mind*. This gave the Parliament an opportunity to intervene in the Company's affairs and to regulate them in the best possible manner.

Parliamentary enquiries and Lord North's Bill, May 1773

Before taking any decisive step, the British Government set up two Parliamentary Committees (One Select Committee and the other Secret Committee) to look into the Company's administration. These Committees submitted eighteen reports (six by the secret Committee and Twelve by the Select Committee) each of which condemned the Company for its misrule. Lord North's Government, thereupon, prepared a Bill contemplating the Parliamentary regulation of the Company's affairs.

While introducing the Bill on May 18, 1773 Lord North emphasised the need of placing the Company's affairs on a solid, clear and decisive establishment. He also observed that the state

*The South Sea Company had been founded in England in 1711. As a result of the speculating mania which set in, its £ 100 stock reached its highest figure £ 1060. Then came the reaction and South Sea stock fell to £ 135. Thousands of people of all classes were ruined.

intervention was necessary to the well-being, nay, to the existence of the East India Company) Mr. Edmund Burke opposed this view of the Government. He firmly maintained that the Parliamentary intervention was 'impolitic, unwise and entirely repugnant to the letter as well as to the spirit of the laws, the liberties and constitution of this country'. He denounced the Bill as an 'infringement of national right, national faith and national justice'. The East India Company petitioned against Lord North's Bill and declared it as an open attack on the liberties and rights of the British subjects. From the Directors' point of view Lord North's measure aimed at the annihilation of the Company's power and its virtual transfer to the Crown. The city of London also protested against it on the ground that 'the privileges of the city of London enjoyed stand on the same security as those of the East India Company.' But all these protests and petitions proved unavailing as the Government was bent upon taking a decisive action. The Bill was passed by 131 to 21 votes in the Commons and by 74 to 17 in the Lords. It came to be known as the Regulating Act of 1773. In addition to the Regulating Act, the British Parliament passed another Act by which it granted to the Company a loan of £1,400,000 at 4% interest to relieve it of its financial difficulties.

II—MAIN PROVISIONS OF THE ACT

or

(CHANGES INTRODUCED BY THE ACT)

The Regulating Act was a long document. It remodelled the Company's constitution and also introduced some important changes in the government of its Indian possessions. The main changes effected by this Act in the existing set-up may be described as under :—

I—Changes in the constitution of the Company in England

(1) The Regulating Act raised the qualifications to vote at the Court of Proprietors. Hitherto only those Proprietors who held stock worth £ 500 for at least six months preceding the date of election had the right to vote for the election of the Directors. The Act now gave this right only to those Proprietors who had stock worth £1000 and for at least 12 months before the date of election. As a result, 1246 petty stockholders were disqualified. This change was intended to make the Court of Proprietors less chaotic and irresponsible and to prevent the Company's servants returning from India from gaining an excessive influence over the Directors.

(2) The term of the Directors was extended from one to four years. One-fourth of them were, however, to retire every year and their places were to be filled up by a fresh election*. The longer tenure was expected to secure stability and continuity in the policy of the Directors who, hitherto, spent the first half of their year of office in discharging the obligations by which they had purchased their seats and the other half in canvassing and preparing for the new election.†

(3) The Court of Directors was to lay before the Treasury all correspondence from India dealing with the revenues, and before a Secretary of State everything dealing with Civil and Military affairs.

II—Establishment of Company's Central Government in India

(1) The Regulating Act set up a central government for the British territories in India. It was to consist of a Governor-General assisted by four Councillors. The first Governor General (Warren Hastings) and his Councillors (Clavering, Monsop, Barvell and Francis) were named in the Act‡.

(2) The Governor-General and Councillors were to hold office for a fixed term of five years. The salary of the Governor-General was to be £25000 and that of each of the Councillors £1000 annual§.

(3) The decisions in the Council were to be arrived at by a majority of vote and they were to be binding on the Governor-General and his Councillors. If at any time (due to death, removal or absence of any member) there was an equal division of opinion, the Governor-General was to have a casting vote.

(4) The Governor-General and Council were empowered to superintend and control the Presidency Governments in their relations with the native powers. The Presidencies could not commence hostilities or declare war or conclude any treaty with the Indian princes without the previous consent of the Governor-General and Council. In cases of emergency or direct orders from the Directors in London, they could, however, act without leave being first obtained from the Governor-General-in-Council.

*Instead of the entire Court of Directors being elected annually, six were to be elected for one year, six for two years, six for three years and six for the full term of four years,

†*Cambridge : History of India* P. 190.

‡After this the appointments were to be made by the Court of Directors.

§Handsome salaries were given to them to keep them above the temptation of corruption.

(5) The Governor-General-in-Council were also empowered to make and issue rules, ordinances and regulations for the good order and the civil government of the Company's territories in India. Their enactments were (a) required to be consistent with the laws in force in England, and (b) they could not be valid unless they were registered and published in the Supreme Court at Calcutta.

(6) The Governor-General-in-Council were required to pay due obedience to the orders of the Court of Directors and keep them constantly informed of all matters affecting the interests of the Company.

III—Changes in the Presidency Governments of the Company

(1) The Presidency governments (*i.e.* Governors-in-council) were required to pay due obedience to the orders of the Governor-General-in-Council, who had the power to suspend any offending Governor and his Council.

(2) The Presidencies were required to submit to the Governor-General-in-Council all the information they had concerning the government, revenues or interests of the Company.

IV—Establishment of Supreme Court at Calcutta

(1) The Regulating Act made provision for setting up a Supreme Court at Calcutta, consisting of a Chief Justice and three assistant judges*. All of them were to be barristers of England or Ireland of not less than five years standing.

(2) The Chief Justice and assistant judges were to hold office at the pleasure of the Crown. They were to be paid £8,000 and £6000 each respectively per year.

(3) The Court had the power to try civil, criminal, admiralty and ecclesiastical cases. Its jurisdiction extended to all British subjects residing in Bengal, Bihar and Orissa to suits, actions or complaints against persons in the service of the Company, or of any of His Majesty's subjects.' It had both original and appellate jurisdiction.

V—Reforms in Civil Service

(1) All persons in the Indian Civil Service were prohibited from receiving any presents from the native princess or people of India.

*This court was constituted by the Charter of March 26, 1774.

(2) The Governor General, members of his Council and the Judges of Supreme Court were also prevented from engaging in any commercial transaction whatever.

(3) Every officer was required to submit to the Board of Directors on his return to England a list of properties acquired by him, with an explanation of how they were acquired.

III—DEFECTS OF THE ACT

(Various observations have been made on the Regulating Act of 1773. Dodwell described it as 'a medley of inconsistencies dictated by tyranny, yet bearing throughout each line the mark of ignorance.' Roberts denounced it as a 'half-measure, disastrously vague in many points'. In the opinion of Profs. Thompson and Garrett the Act was an ill-timed piece of legislation, conceived and drafted in complete ignorance of the conditions in Bengal. Its draft contained vague phrases which were bound to cause conflicts among administrative institutions set up by it. Mr. Bouten Rouse held the view that 'the object of the Act was good, but the system that it established was imperfect'. The Act, no doubt, had many shortcomings which may be briefly explained as under :—

(First, the Act did not grant veto power to the Governor-General and thus made it difficult for him to maintain his authority in his own council. The Act made it obligatory for the Governor-General to act in accordance with the opinion of the majority in the Council. It gave him no authority to override the decisions of his Councillors. This weak position of the Governor-General soon paralysed the central executive.) Warren Hastings, the first Governor-General, was steadily outvoted and overruled, as three of his colleagues formed a strong combination against him. In consequence, Warren Hastings had to carry out the policies which he personally disapproved, and he ceased to be the Governor-General for all practical purposes. His opposition gradually grew so strong that by 1776 he was obliged to think seriously of resigning his post. It is said that he even tendered his resignation to the Court of Directors, but later on withdrew it when Clavering died. And fortunately for Warren Hastings, the vacancy was not yet filled up. Whether all this actually happened or not is immaterial. But there is no denying the fact that Warren Hastings had a very difficult time. He himself wrote: "My situation is truly painful and mortifying, deprived of the powers with which

I have been invested by a solemn Act of the Legislature, denied the respect which is due to my station and character.....and condemned to bear my share in the responsibility of measures which I do not approve”*. It was only after the death of Clavering that Hastings was able to maintain his supremacy (by means of his casting vote) in the Council. “The entire dependence of the Governor-General on the votes of his Council”, writes Alfred Lyall, “reduced him (Warren Hastings) to a cipher, threw all his foreign policy out of gear and gave birth to long and violent struggles between Hastings and his Councillors”.† These unhappy struggles in the highest executive, something unique in the history of administration, undermined the British prestige and had adverse effect on the conduct of the Company’s affairs. To quote Prof. Spear, “They made any consistent internal policy difficult and spread faction throughout the Company’s service in Bengal and back in Leadenhall Street and Westminster”‡.

The appointments of Francis, Monson and Clavering as councillors Warren Hastings were unfortunate. They were public men of England and had no knowledge of Indian conditions. Besides, all the three were prejudiced against Hastings and the Company’s Indian administration. To make matters worse, Francis thought that he would make a much better Governor-General than Hastings himself. Rather, he had sailed from England with the hope that he would succeed Hastings as Governor-General in India. In the words of Barwell : “These three councillors had embarked, from the very outset, upon a predetermined, preconcerted system of opposition”, and therein also lay the tragedy of the affairs. Such a batch of colleagues was sure to create troubles for the Governor-General whose constitutional position was also not strong.

Secondly, the provisions relating to the jurisdiction of the Supreme Court were ‘obscure and defective’. They did not say anything precise with regard to the powers of the Supreme Court, the law it was to administer and its relations with the Governor-General-in-Council. Some fundamental questions lacked clarity and precision. For instance, the Act did not define clearly as to who were to be the British subjects within the meaning of the Charter of the Supreme Court. In one sense, says Stephen, the whole

*Forrest : *Selections from... State Papers*, Vol. II, P. 279

†Lyall : *British Dominion in India*, P. 125

‡Tpear : *A History of India* P. 89

population of Bengal, Bihar and Orissa were British subjects. In another sense, no one was a British subject who was not an Englishman born. In a third sense, the inhabitants of Calcutta and not the general population of Bengal might be regarded as British subjects.* These various interpretations of the provisions were bound to cause difficulties sooner or later.)

[The provisions of the Act with regard to the law that the Court was to administer were also ambiguous. The Court did not know whether it was to administer the native law or English law, the law of the defendant or that of the plaintiff.]¹ It baffled the wit of the Chief Justice Impey who himself regretted the anomaly of his position. The relations of the Court and the Council were also not well-defined. It was not stated in clear terms as to how far the Supreme Court could question the legality of the acts performed and orders issued by the Governor-General-in-Council.

The aforesaid anomalies in the Regulating Act had serious consequences. They led to disputes between the Court and the Council. In Patna Case** (1777-79) as well as Kasijora Case† (1779-80) the authorities had a very bitter experience. The Court and the Council had open clashes followed by a deadlock between the two organs. To worsen the situation, the Act provided no supreme legislative authority nearer than in England to arbitrate in these quarrels, and to mark off the proper spheres of the executive and judicial departments.

Besides, the Supreme Court was not popular with the native population. The English lawyers struck the greatest fear among the local people, and the rule of the Supreme Court, in the words of Macaulay, 'proved a reign of terror.' The Court was charged with

* *Nuncomer and Impey Vol. I. P. 126.*

† *Patna Case (1777-79)* : In Patna Case the Supreme Court claimed the right to try actions brought against the Indian Judicial officers of the Company for acts in their official capacity.

‡ *Kasijora Case (1779-80)* : It so happened that Mr. Hyde, one of the Judges of the Supreme Court, issued a writ against the Raja of Kasijora, a *Zamindar* of the Company. But the Council told the Raja that he was not subject to the jurisdiction of the Court. To worsen the situation, when the Supreme Court sent Sheriff's officers to arrest the Raja, the Council sent some companies of sepoys to arrest the Sheriff's officers and bring them back to Calcutta. This resulted in a serious clash between the Court and the Council. The justice of the whole matter is difficult to decide, yet this clash between the two was definitely injurious to the Company's administration.

stopping the wheels of Government by technicalities of English law and of effecting a total dissolution of the social life.

Thirdly, *the Act did not establish an effective control of the Government of Bengal over the Presidencies.* Under the plea of emergency, the Presidency Governments could embark upon wars and conclude alliances even without seeking the previous permission of the Governor-General-in-Council. The Governments of Madras and Bombay took advantage of this exception. They commenced hostilities with the Marathas and Haider Ali of Mysore on their own initiative and drove the authorities in to serious difficulties. Besides the heavy losses in men and money, the Supreme Government suffered in prestige and dignity. This unhappy experience was mainly due to the vague latitude which the Regulating Act had given to the Presidencies.)

Fourthly, *the Parliamentary control over the Company's administration was inadequate.* As provided by the Act, the Court of Directors was to submit to the Ministry within fourteen days the copies of all civil and military despatches received from the Governor-General-in-Council in India. But no effective machinery had been set up by the Act to study and scrutinise those reports and then urge the Government for necessary action. Thus, the Parliamentary control over the Company and its affairs in India could not be effective.

Fifthly, *the changes affecting the Company's constitution in London also failed to attain their object.* The regulations concerning the Court of Proprietors were meant to secure the integrity of conduct. They also aimed at providing the much needed security against faction and disorder. But the Act in operation clearly revealed that the result had fallen short of the expectations.) To quote G. N. Singh, "the alternation in the voting qualification of the General Court did not improve the existing state of affairs because the laudable object of preventing Company's retired servants from gaining an excessive influence in the counsels of the Company was not realised. On the other hand, the Court of Directors was transformed into a more or less permanent oligarchy".*) Roberts also holds that the provision relating to the changes in the constitution of the Directors 'failed

*Singh G.N. : *Landmarks in India Constitutional and National Development* P. 21.

to obtain its object'.*

{ To sum up, the Regulating Act established a system of government which was defective in many respects. It had neither given the State a definite control over the Company, nor the Directors a definite control over their servants, nor the Governor-General a definite control over his Council, nor the Calcutta Presidency a definite control over Madras and Bombay. }

Defects of the Act were unavoidable

The Regulating Act had, no doubt, various basic imperfections, and the machinery of government set up by it soon proved unworkable. But the critics of the Act have gone too far in condemning this measure. They have totally disregarded the limitations and influences under which the British Government framed this constitution. The defects of the Act were, as a matter of fact, unavoidable.

In the first place, the British Parliament was called upon to deal with a problem which was novel in its nature. On one hand, the Company's emergence as a territorial power called for Parliamentary regulation of its affairs. On the other hand, its legal position as the Dewan of the Mughal Emperor left little scope for the Parliamentary intervention. Expert advice and necessary facts for the purpose were not available. The only persons competent to advise the British Government were the Company's civil servants but they did not enjoy the confidence and respect of the statesman at the helm of affairs. Obviously, under the circumstances it was but natural for the authors of the Act to commit some mistakes. To quote S. C. Ilbert : "The defects of the Act were natural, partly because of the necessity of the case and partly because the Parliament was facing the difficult question of constitutional law". It was, however, fortunate for the British, write G.N. Singh, "that the defects, many and serious as they were, did not prove fatal".†

In the second place, Lord North was not the man to take a strong and decisive measure. Habitual indolence, coupled with his desire of 'let sleeping dogs lie', led him to leave the *status quo*

* Roberts : *Cambridge History of India*, Vol. V. P. 119

† Ibid P. 131

‡ Singh G. N. : *Landmarks in Indian Constitutional and National Development*.

much undisturbed as possible.* *Thirdly*, the Regulating Act was the first of its kind. Its authors had no experience of the Indian affairs. They were just groping in the dark. Hence it was quite possible for them to stumble. *Fourthly*, the Regulating Act was enacted at a time when Montesquieu's theory of Separation of Powers was in the air. The authors of the Act could not remain unaffected by it, while framing the constitution. Hence it was natural for the defects of this theory to creep into the system established by the Act.

IV—HOW WERE THE DEFECTS OF THE REGULATING ACT REMOVED ?

The glaring defects of the Regulating Act could no longer escape the attention of the Parliament. The border warfare between the Court and the Council, the violent quarrels in the highest executive and the defiant attitude of the Presidency Governments soon brought to light the imperfections of the measure. But the authorities at home were not prompt at removing these defects. Nor did they attempt to rectify the mistakes through a single parliamentary measure. The defects of the Regulating Act, therefore, took many a year to be removed by various enactments.

The first attempt to deal with the defects of the Regulating Act was made in 1781 when the *Amending Act* was passed to regulate the relations between the Court and the Council. This Amending Act distinctly ascertained the jurisdiction of the Supreme Court, defined the authority of the judges and settled once for all the other points of dispute between the Court and the Council. The Act thus ensured a smooth working between the two important organs of the government and thereby removed a serious defect of the Regulating Act, 1773.

The Regulating Act in its working had revealed the weak position of the Governor General in his Council. His control over the Councillors was found to be inadequate and ineffective. The authorities at Home were unhappy over the violent quarrels which had hampered the smooth working in the highest executive. Yet nothing was done for long to remedy this unwholesome and unsatisfactory situation. It was in 1786 that the Government had to act for removing this defect of the Indian administration. In that year the office of the Governor General was offered to Lord

*Banerjee A. C. : *Indian Constitutional Documents Vol. I (Introduction, P. XXI).*

Cornwallis, but he refused to accept it unless he was given the power to override the majority of his Council. Since Cornwallis enjoyed the support of the authorities and the confidence of the nation, he was readily granted (by the *Amending Act of 1786*) the power to veto the decisions of his Council. This obviously meant the removal of another serious defect of the Regulating Act.

Under the Regulating Act of 1773, the Governor General's control over the Presidency Governments had remained ineffective. The *Pitt's India Act* of 1784 made them definitely subject to the Governor-General-in-Council in all questions of revenue, war, peace and negotiations. The Supreme Government was also to superintend and control the Presidencies in any matter referred to them by the Court of Directors. This considerably strengthened the position of the Supreme Government in relation to Presidencies and thereby removed a glaring defect of the previous measure.

The Regulating Act had failed to establish an effective Parliamentary control over the Company and its Indian administration. The Pitt's government sought to remove this defect by a constitutional measure. Its well known statute, the *Pitt's India Act of 1784*, placed the East India Company under Parliamentary control in everything except its patronage and commerce. This tended to remove another serious defect of the existing system.

V—WAS THE REGULATING ACT A SUCCESSFUL ATTEMPT TOWARDS REFORMATION ?

The Regulating Act was certainly an attempt towards reformation. Its author Lord North intended to remove the abuses that had crept into the Company's administration. He wished to regulate the Company affairs, curb its autocratic power and restore law and order in its Indian possessions. While introducing the Bill in the Parliament in May, 1773, he had made it clear that 'every article in it is framed with a view to the placing of the affairs of the Company on a solid, clear and decisive establishment'. But, unfortunately, this attempt of Lord North proved one-sided and was confined to London. To put in other words, the Act introduced some useful reforms in the administrative set up of the Company in London, but it failed to improve the state of affairs in its Indian possessions.

The changes affecting the Company's set-up in London had, no doubt, something to commend in their favour. They considerably

reduced the unhealthy influence of the proprietors and made their court less chaotic and irresponsible. The Act also gave the much needed stability and strength to the executive. All this marked a notable improvement upon the existing conditions.

Prof. G. N. Singh and P. E. Roberts, however, hold a different view. They are of the opinion that the Regulating Act failed to mitigate the evil of trafficking in votes even after raising the qualification to vote at the Court of Proprietors. The retired servants of Company continued to influence its (Court of Proprietors) counsels and the Court of Directors was transformed into a more or less permanent oligarchy.

The Act did not affect any notable improvement in the Company's Indian administration. Instead of giving orderly and efficient government to its territories in India, it set up various centres of conflict. The Governor General's quarrels with his Councillors paralysed the highest executive and the Presidency Governments remained as independent of the central control as before. The Supreme Court established to give effect to the plan of controlling the Company's government by King's Court also failed in its object. Instead of affording some relief to the wronged and the oppressed, it soon turned to be an engine of oppression. Thus, the Act did not prove an effective attempt at improving the existing state of affairs.

VI—SIGNIFICANCE OF THE ACT

The Regulating Act, with all its defects, was a measure of great constitutional importance. It gave a definite and recognisable form to the vague and arbitrary powers of sovereignty that had devolved upon the East India Company. It was also the first in the series of the Parliamentary Acts that altered the form of the British government in India from time to time. The Act, in addition, provided the basis of the Anglo-Indian Constitution.

The Regulating Act, in the first instance, recognised the fact that the East India Company was not merely a commercial corporation. It had, on the other hand, emerged into a territorial power which could no longer be left beyond the effective control of the British Parliament. The Act was, thus, an indicator to the change that had come in the position and functions of the Company during the last about one hundred and fifty years.

Secondly, the Regulating Act initiated the process of centralisation in respect of Company's Indian administration. The Governor of Bengal was designated as Governor General of Bengal and the scattered British presidencies were subjected to his supreme control. Thus, the Act laid the foundation of the unitary type of government in India. It also, in a way, took the first step towards the unification of India.

Thirdly, the Regulating Act was the first government measure by which the British nation, as a nation, assumed the actual responsibility of the government of the territories won by the servants of a trading corporation. No other European power had so far made any such attempt.

Fourthly, as a result of this Act, the Company came under the direct control of the British Parliament; its powers and patronage were carefully curtailed; and its internal economy was greatly improved.

Fifthly, the Act was also significant in so far as it tried to put down bribery and other obnoxious evils which were rampant among the servants of the Company. Since their greedy attitude and oppression had made the lives of the Indians very miserable, it was the most important provision of the Act from the latter's point of view.

Sixthly, the defects of the Regulating Act proved to be a blessing in disguise. But for the dissections in the Governor General's Council, the impeachment of Warren Hastings in Westminster Hall (1788-95) and the faithful record of his questionable deeds, would never have become possible. Nor the pathetic trial of the Governor-General and the historic speeches of Burke, Fox and Sheridan, which stirred the conscience of England to a great depth, would have found a place on the pages of history. Moreover, if there had been no serious defect in the Regulating Act of 1773, writes Prof. Spear, the British Parliament would not have passed the useful measure like the Pitt's India Act of 1784.

Seventhly, the Regulating Act is also commendable in so far as it made a bold attempt at securing orderly and efficient government in the Company's territories in India, without the Crown directly assuming the responsibility for the same.

AMMENDING ACT, 1781

(A Supplement to the Regulating Act)

A few years' working of the Regulating Act had impressed upon the Parliament the urgency of ascertaining the jurisdiction of the Supreme Court, of defining its authority and of settling its relations with the Governor-General's Council. In the '*Kasijora Case*' and the '*Patna Case*' the authorities had a very bitter experience, for the Court had created much disturbance and discontent by exercising its power too rigidly and too pendentically. The Governor-General-in-Council and the prominent British inhabitants of Bengal had, therefore, petitioned to the Parliament. In their petition they had not only condemned the misuse of power by the Court at Calcutta but had also stressed the need of a constitutional measure to remove the possibilities of conflicts between the Court and the Council. The Court of Directors had also complained that the anomalous jurisdiction of the Court had involved "the servants of the Company, and officers of the revenue acting under their authority in circumstances of difficulty and distress". The British Parliament, thereupon, appointed two committees—Select Committee and Secret Committee—to inquire into the state of affairs.

The Select Committee headed by Edmund Burke was to devise rules for regulating the future relations between the Court and the Council. The Secret Committee was entrusted with the task of inquiring into the causes of the Second Mysore War and to report on the existing state of British territories in the East. The Select Committee submitted its report in the same year as a result of which the Amending Act of 1781 was passed.

Main Provisions of the Act

1. The Governor-General and Council were exempted from the jurisdiction of the Supreme Court 'for anything counselled, ordered or done by them in their official capacity' except for the orders affecting the British subjects.

2. The revenue collectors were also exempted from the jurisdiction of the Court in matters relating to the collection of the revenue. Besides, the Court had no power to try a person merely by reason of his being a landlord or a farmer of land or of land-rent.

3. The judicial officials of the country courts were also declared beyond the power of the Supreme Court for anything done by them in their official capacity.

4. The appellate jurisdiction of the Governor-General and his Council as 'Sadar Diwani Adalat' was recognised and confirmed. But this jurisdiction was subject to an appeal to His Majesty in civil cases exceeding £ 5,000 in value.

5. The Act provided that the Supreme Court could not try Indians in the Comany's employment except in actions for wrongs or trespasses or in civil cases only when parties agreed.

6. In cases related to questions of inheritance and contract and affecting Hindus and Muhammadens, the Court was to administer the law of the defendant and not one uniform English law.

7. The Governor-General-in-Council were empowered to frame regulations for the Provincial Courts and Concils from time to time. The condition of registering and getting the sanction of the Supreme Court for the new regulations was eliminated.

Comments

The Amending Act of 1781 was enacted mainly to remove the defects of the Regulating Act. Hence it was, in a way, a supplement to the previous measure. But, besides explaining and amending the Act of 1773, this Act achieved something more to its credit. It provided relief to certain persons imprisoned at Calcutta under a judgement of the Supreme Court of Judicature. It also sought to indemnify the Governor-General and Council of Bengal and all officers who had acted under their orders or authority in the undue resistance made to the process of the Supreme Court. Though the Act, according to Ilbert, was substantially in favour of the Council against the Court on all points, yet it showed clearly that the Supreme Court had correctly interpreted the law as it stood. Besides, the Act in its preamble emphasised the importance of the regular collection of revenue and the maintenance of the people in their law.

FURTHER READING

1. *A.C. Banerjee* : Indian Constitutional Documents Vol. I.

2. *A.B. Keith* : A Constitutional History of India.
3. *S.C. Ilbert* : The Government of India.
4. *G.N. Singh* : Landmarks in the Indian Constitutional and National Development.
5. *Alfred Lyall* : British Dominion in India.
6. *P.E. Roberts* : History of British India.
7. *S.R. Sharma* : Making of Modern India.
8. *H.H. Dodwell* : The Cambridge Shorter History of India.
9. *Sri Ram Sharma* : A Constitutional History of India.
10. *Percival Spear* : (i) India (ii) A History of India.
11. *V. B. Kulkarni* : British Statesmen in India.
12. *Banerjee* : The Supreme Court in conflict.

CHAPTER 4

Pitt's India Act, 1784

For seven years after the passing of the Regulating Act of 1773, England remained embroiled in the rebellion of the North American Colonies and the war with France. The British Parliament and the nation, therefore, could not pay any attention to the Company's affairs, and system of government set up by the Act continued to function. The reports of the misdeeds of the Company's government in India gave rise to a heated debate in the Parliament in 1780, but no constitutional step in the direction could be attempted till the American War of Independence was over. Mr. Dundas for the first time made a proposal for reform in April 1783, but it came to nothing. This was followed by Mr. Fox's Bill of November, 1783. This Bill was carried in the House of Commons by 208 to 108, but was defeated in the Lords. Pitt succeeded Fox in the early 1784 and introduced a new Bill carefully drafted in the light of the recent developments and experiences. It was passed by the two Houses, and it received royal assent in August 1784. It came to be known as Pitt's India Act of 1784.

I—CIRCUMSTANCES FAVOURING ITS ENACTMENT

Pitt's India Act was the most successful measure of Mr. Pitt. He got it enacted in the very first year of his office. The factors and

forces which urged him to pay immediate attention to the Indian problem and then undertake this parliamentary legislation were various and manifold and can be studied as under :—

(a) *Confusion and corruption in the Company's Government in India*

The Regulating Act remained in force from 1773 to 1784, but it failed to provide a satisfactory government in the Company's Indian possessions. The subordination of the Governor-General to a majority of his Council introduced weakness and vacillation in the central executive. Warren Hastings had to face a hostile opposition which reduced him to cipher for a number of years. The Presidency Governments on the pretext of emergency drove the higher authorities into various complications. The Supreme Court at Calcutta (because of its ill-defined jurisdiction) came into conflict with the existing courts of law and the Governor-General and his Council.

To make matters worse, the colleagues of Warren Hastings proved fortune-hunters. Barwell made an estimated pile of £80,000 after six years' service, despite the fact that he was an inveterate gambler. Francis and Impey also made huge fortunes through unfair means and irregular methods. According to Dennis Kincaid, Pigot, the popular Governor of Madras, received a bribe of £120,000 from the Nawab of Carnatic, while the even more moderate Wynch pocketed £20,000. The contemporary sources reveal that even priests, claiming to be the servants of God, could not resist the temptation. The Archbishop of York was profoundly grateful to Warren Hastings for allowing his son (who was the Resident of Benaras) to make £30,000 a year in bribes.* This confusion and corruption in the Company's administration could no longer escape the attention of the Parliament and urged it to establish an effective state control to remedy the unwholesome situation.

(b) *The Loss of American Colonies*

The American War of Independence resulted in England's loss of thirteen American colonies. It also dealt a severe blow to her trade and economy. This huge loss of the British Empire greatly increased the importance of India. The British statesmen began to look upon the Company's Indian possessions as 'the brightest

*Dennis Kincaid : *British Social Life in India* P. 108.

jewel that now remained in His Majesty's Crown.' This feeling was frankly expressed by Mr. Pitt, the then Prime Minister. In his speech of July 6, 1784 he remarked, 'With the loss of American Empire, the value of British territories in India has immensely increased for England. It is now in the British interest to chalk out a useful plan for their administration.' Obviously, the loss of the American colonies also, in a way, urged the Parliament to take this constitutional measure.

(c) *Welfare of the Natives*

Mr. Pitt, the Prime Minister, was a shrewd statesman. He rightly held that the prosperity of England, in a large measure, depended on the welfare of the Indians. Speaking on this subject in the British Parliament, he once observed: 'State control on the Company and its Indian administration was essential to confirm and enlarge the advantages derived to this country (England) from its connection with India, to render that connection a blessing to the native Indians'. This sense of decency might have been another consideration with the authorities who enacted the Pitt's India Act of 1784.

(d) *Constitutional Crisis of 1782*

Though the popular attention during the past many years had been mainly occupied with the foreign complications, yet the reports concerning the maladministration in India could not escape the notice of the politicians. Two Parliamentary Committees had been appointed in 1781 to enquire into the administration of justice in Bengal and to investigate the causes of the war in Carnatic. On the reports of these Committees, the House of Commons resolved that Warren Hastings and the Governor of Bombay (Mr. Hornby) should be recalled. The Directors favoured the idea of the House, but the Proprietors refused to ratify the resolution. Hence Warren Hastings was kept in office, in defiance of the wishes and resolution of the Commons. This was, indeed, a very bitter experience for the Government in so far as it showed that the State had no control over the Company and its affairs. The Parliament, thereafter, began to look for an opportunity to remedy this situation.

(e) *Company's Petition for Financial Relief and Parliamentary intervention*

The long-awaited opportunity for the Government at last came in March, 1784 when the Company applied for financial relief. Mr. Fox then bitterly criticised the Company and called

its administration a system of despotism unmatched in all histories of the world. Mr. Burke was equally vehement in his denunciation. He dubbed the Company as one of the most corrupt and destructive tyrannies that probably ever existed in the world. While concluding his speech, Mr. Burke also observed, 'Relief and Reform must go together'. This view of his had the national support and was soon followed by the proposals for reforms and State intervention.

(f) *Dundas India Bill* (April 1783) and *Fox's Bill* (November, 1783)

After the formation of the Coalition Ministry of Fox and North, Mr. Dundas introduced a bill (*India Bill*) which proposed that :

1. The King should have the power to recall the principal servants of the Company.
2. The Governor-General should be allowed to exercise veto power in special cases.
3. The control of the Governor-General and Council over the Presidencies should be increased.

Dundas Bill had a very little chance of success as he was in opposition. Therefore, after its introduction in the Parliament it was allowed to drop. His Bill, however, served one very useful purpose. It emphasised the urgency of a constitutional measure and prompted the Ministry into action. Mr. Fox, thereafter, took up the question and introduced his famous *East India Bill* in October, 1783. The provisions of his Bill may be broadly divided into two sections : (a) Provisions dealing with the Board of Seven Commissioners (b) Provisions dealing with Subordinate Board or Board of Nine Assistant Directors.

(a) *Provisions dealing with the Board of Seven Commissioners*

(1) The Courts of Directors and Proprietors were to be abolished. In their place a 'Board of Seven Commissioners or Directors' was to be constituted. (2) These Commissioners were to have full power and authority to order and administer the territories and revenues of India. (3) They were to be authorised to appoint and dismiss all persons in the service of the Company. (4) The Commissioners were to remain in office for four years and could not be removed except by the King on the address of either House of the Parliament. (5) The 'Board of Commissioners' was to sit in London and the Parliament had the power to inspect the minutes of its meetings.

(b) *Provisions dealing with the Subordinate Board*

(1) For the management of the commercial transactions of the Company there was to be a 'Second Board' or Subordinate Board consisting of nine assistant Directors. (2) The members of this Board were to be chosen by the Parliament from amongst the Proprietors of the Company and the casual vacancies to be filled in by the Court of Directors. (3) They were to have the same security of tenure as the Commissioners for a period of five years. (4) The Bill also contained several provisions putting down monopolies, the acceptance of presents and the loan of British troops to native princes.

Fox's India Bill was strongly opposed by various classes. The merchant class considered it a blow levelled at the great merchant body in the realm. Corporations trembled at the violent and unnecessary infraction of the chartered rights of the Company. The King viewed the measure as a mere trick to transfer the patronage of India to a body already notorious for misusing its power. The result was that the Bill, though passed by the Commons, was denounced and rejected by the Lords*.

*An impartial scrutiny of the facts reveals that the Bill was denounced in exaggerated terms. The Bill, says Robertson, was 'a sincere and statesmanlike effort to deal with a great problem on comprehensive lines, but George III, Pitt, Thurlow and the East India Company did not consider it on its merits. A B. Keith, too, observes that the Bill was 'a vigorous effort to reform the whole constitution.' The main point of criticism against the Bill was the transference of patronage to a Board of Commissioners which, in the eyes of opposition, would use it to corrupt Parliament and maintain themselves permanently in power., To quote Robertson, "It seemed to shift a vast patronage, not from the Company to the Crown, but to a political party who, it was asserted, would use it to debauch Parliament and gild the chains of a new political slavery." The fact that the seven Commissioners nominated were all supporters of Fox's party lent plausible colour to the charge. But be it noted that these Commissioners could have hardly used this power in a more dangerous manner than it was already being used. The vague control of the Parliament and Commissioners—the weak spot hinted at by the opposition—could also be adjusted. So failure of this Bill should not be attributed to the substance it contained, but to the political influence which worked against this measure. It was the unpopularity of North-Fox Coalition, the tactlessness of Fox and the strong opposition of George III (who actually interfered and directed the Lords to vote against Bill) which made Fox's attempt a failure. If Fox and North had not chosen their own partisans as Commissioners but had taken them from all the three parties, writes Holland Rose, the Bill would have never met this disappointing end.

Pitt's East India Bill

After the Fox's Bill had been thrown out in the upper house, George III promptly dismissed the coalition. The Parliament was dissolved and Pitt came into power with a huge majority in the general elections. Early in the year he introduced his Bill in the British Parliament and in his opening speech, he thus stated its object, "The imperial dominion of our territories in the East ought to be placed under other control than that of the Company of merchants in Leadenhall street, but the change ought to be made with as little violence as possible. It ought to be made by the conviction of the Company and not by violence".* The East India Bill was passed in August, 1784.

II—MAIN PROVISIONS OF THE ACT

or

(CHANGES INTRODUCED BY THE ACT)

The Pitt's India Act, 1784 was a significant measure of Pitt's government. It not only introduced far-reaching changes in the Company's government at Home, but also deprived the Company of its supreme and ultimate control in the management of Indian affairs. The main provisions of this Act may be studied as under :

I—Provisions dealing with the home Government

The Act of 1784 reorganised the Company's government at Home and created the dual authority of the Board of Control and Court of Directors in London. Hence the provisions dealing with the administrative set-up of the Company at Home may be divided into two parts : (a) Provisions dealing with the Board of Control, (b) Provisions dealing with the Court of Directors.

(a) Board of Control

(1) The Act established a 'Board of Six Commissioners' for the affairs of India', popularly known as the Board of Control. It was to consist of the Chancellor of Exchequer, a Secretary of State, and four other Privy Councillors holding office at the royal pleasure and appointed by the King

(2) The Secretary of State was to be the President of the Board. In his absence, the Chancellor of Exchequer, and in the absence of both of them, the senior amongst the other Commissioners was to preside at the meetings of the Board. The President was to have a casting vote, in case the members present

*Fouest, Vol. I P. 296.

were equally divided in opinion. The quorum of the Board was fixed at three.

(3) This Board was to superintend, direct and control all acts, operations and concerns which were in any way related to civil or military government or revenues of British possessions in the East Indies.

(4) The Board of Control was given full access to all the records of the Company. No despatch other than those that were purely commercial in nature could be sent without their approval.

(5) The Board had the power of approving, disapproving or amending the letters, orders and instructions submitted to them, and the Directors were required to send the despatches, so approved or amended, to their servants in India.

(6) For the readier despatch of business, the Board might ask the Directors to prepare an order or despatch on any subject. If within 14 days the order of the Board was not complied with, the Board might itself prepare the despatch and send it to the Directors who were required to transmit it as from themselves to any government of India.

(7) The Board of Control was to issue orders and directions ordinarily to and through the Court of Directors. But it could send its urgent and secret orders and directions through a Secret Committee of the Directors consisting of not more than three members. This Secret Committee was required to transmit them to the governments in India without disclosing the same to the other Directors.

(8) The Board was to have no power of patronage viz., the right to appoint and dismiss the Company's servants. Its Commissioners were to be unpaid.

(9) The Court of Proprietors was forbidden to annul or suspend any resolution of the Directors which was approved by the Board of Control. This was a punishment for defying the Commons in 1782.

(10) The Parliament was empowered to pay the salaries, charges and expenses of the Board of Control out of the revenues of India provided this charge did not exceed £ 16,000.

(b) Court of Directors

(1) The Court of Directors was allowed to exist as before. It

was to enjoy all its commercial privileges. In case of any encroachment by the Board on its commercial business, the Directors had the right to appeal to the King-in-Council.

(2) The Directors also retained their patronage viz. the right to appoint and dismiss their own servants. The Board could, of course, recall any one of the Company's servants.

II--Provisions dealing with the Company's Central Government in India.

(1) The Act also made some important changes in the Governor General's Council. It was to consist of the Governor General and three other members (not four as before). One of them was to be the Commander-in-Chief of the Company's forces in India. The Governor-General thus acquired an effective casting vote. With the help of one of three members and his casting vote, he could keep his ascendancy over the Council.

(2) Only covenanted servants of the Company were to be appointed as members of the Governor-General's Council. The experiment of sending new men from England (as was evident from the Councillors of Warren Hastings) had proved a failure.

(3) The Company's territories in India were, for the first time, called 'the British possessions in India'.

(4) The Control of the Governor-General-in-Council over the Presidencies of Madras and Bombay was clearly defined and made more effective. As stated in the Act, the Governor-General-in-Council was to have full power and authority to superintend, direct and control the Presidencies in matters of war, peace and revenue or any other point as might be specially referred to their superintendence and control by the Court of Directors.

(5) In case of a vacancy in the office of the Governor General, if no substitute was appointed by the Directors, the senior Councillor was to act as such.

III--Provisions dealing with the Presidencies

(1) In each of the Presidencies, the Council of the Governor was to consist of three members, and not of four as before. One of them was to be the Commander-in-Chief of the Presidency.

(2) Only covenanted servants of the Company were to be, henceforth, appointed as members of the Councils of the Governors.

(3) The Presidencies of Bombay and Madras were subordinated to the control of the Calcutta Presidency in all questions of war, revenue and diplomacy. Disobedience on the part of the Presidencies could lead to their suspension.

(4) The Governors and the Councillors were to be appointed by the Court of Directors but could be recalled or removed by the King.

IV—Some other important provisions of the Act

(1) The Company was asked to put her house in order and to carry out every practical retrenchment and reduction in its civil and military establishment. It was also to stop all schemes of conquest and extension of dominion, for it was clearly laid down in the Act that 'to pursue schemes of conquest and extension of dominion in India were measures repugnant to the wish, the honour and the policy of this nation.'

(2) The Act of 1784 made better provision for the trial in England of offences committed by the English in India. A special court, consisting of three judges, four peers and six members of the House of Commons, was established to deal with such cases.

(3) The servants of the Company were ordered not to deal in money matters with the native princes.)

III—DUAL GOVERNMENT AT HOME

(Relative position of the Board and the Court)

Pitt's India Act of 1784 divided the commercial, political and administrative affairs of the Company in two distinct parts and entrusted them to two different authorities. The management of the commercial business of the Company was left in a more or less undisputed charge of its Directors, while its political activities were subjected to the control and direction of the Board of Control. Thus, the Act established a dual system of government in London to run the Company's administration. This dual government, adjusting different activities of the Company between two distinct bodies representing two separate authorities—the Crown and the Company—has been often described as 'Compromise'.*

*It was, however, not the double government of Clive where two authorities, virtually responsible to no one, shared the proceeds of the country. *Spear : India : A Modern History* P. 211.

The 'Compromise' was, however, peculiar in its nature. It made one of the partners stronger than the other. The powers and influence vested in the Board of Control were more comprehensive than those of the Court of Directors. As provided by the Act, the Board had the power to superintend the political activities of the Company, to check and change the orders issued by the Directors to any of the governments in India, and also to recall any office holder appointed by the Directors for the Company's administration in India. All this constituted a great reserve of power for the Board making its position supreme in the Company's political affairs.

Again, the Act provided that every order proposed to be sent to India must receive the concurrence of the Board within a fortnight. But the procedure of correspondence designed to receive that concurrence was so elaborate that it gave 'the first and the last word' to its President. Whenever a despatch was proposed to be sent to India, it was first discussed verbally or through private correspondence between the Chairman of the Court of Directors and the President of Board of Control. Then a despatch was prepared by the Directors and sent to the President along with all documentary facts and figures on which the despatch was based. This part of the procedure was known as 'Previous Communication'. The President could either approve the despatch or make modifications in it as he deemed proper. The despatch thereafter was sent back to the Directors for the preparation of a fresh despatch called 'Draft' to be forwarded again to the Board for final approval. This whole procedure, as is evident from its details, gave the Board ample opportunities of impressing its views on the Directors, though the initiative in proposing the despatches ordinarily rested with the latter. Moreover, in case of any difference between the two authorities, the Board could make drastic changes even in the 'Draft' and it actually did many a time. By scoring out whole paragraphs and inserting new ones, writes K. V. Punnaiah, "the President of the Board changed the draft quite out of shape and made it express a meaning very opposite of what was intended by the Court of Directors*. Such an unlimited power of correction 'was in effect co-extensive with the power of initiation'.

In urgent cases the Board of Control could order the Directors to prepare a despatch on a particular subject. In case they refused

*Punnaiah K.V. : *The Constitutional History of India* P. 41.

to comply with its order, the Board could itself prepare a *despatch* and then send it to the Directors for transmission to India. If the Directors were found unwilling to co-operate with the Board at this stage, the latter could compel their obedience by applying to the Court of King's Bench for a *writ of mandamus*.

The power to recall any office-holder of the Company in India was another weapon in the armoury of the Board. The Board could and did make use of this weapon many a time. In 1784, the Court of Directors appointed Mr. Holland as incharge of the government of Fort St. George. But the President of the Board, Mr. Dundas, objected to this selection. When the Directors insisted upon their choice and protested against the undue interference of the Board, Mr. Dundas informed Mr. Holland that he would be recalled as soon as he set his foot in India. In consequence, the Directors had to yield and accept the nominee of Mr. Dundas in place of Mr. Holland. A similar trouble arose in 1806. Then Barlow, the nominee of the Directors, was recalled by the Ministry. Thus by virtue of its power to recall the servants of the Company in India, the Board of Control secured a share even in the appointments of high officials. This was, indeed, very annoying to the Directors who had kept appointments at the cost of their political power.

The Board's power to superintend, direct and control the civil and military government of India further strengthened its position in relation to the Court of Directors. The Governor Generals in India generally preferred Commissioner's orders to those of the Directors. It is evident from the fact that many a Governor-General in succession continued to follow, with the secret support and approval of the Board, an aggressive policy in India in defiance of the Directors' wishes. Obviously, the Board of Control, to all intents and purposes, had a more effective control over the Company's Indian administration. It also wielded a greater power and influence than the Court of Directors.

But all this should not lead us to believe that the Court of Directors was a mere non-entity. It still exercised a considerable influence upon the details of administration. It was also an important channel of communication between the Board of Control and the Governor-General in India. All the despatches from India were addressed to it or to its Secret Committee. The Board and its President always attached great importance to the

opinion of the Directors who were the most experienced men in matters of Company's administration. Besides, the mass of business passed through their hands and this, in consequence, also allowed them an enormous influence. Mr A.B. Keith rightly observes : "the Court possessed a considerable possibility which, in practice, was a reality of control.* Writing about his position to the Duke of Wellington in 1838, Mr. Henry George Tucker, the Chairman of the Court, thus observed ; "It is true that you have placed the Indian administration under national control, even then we can influence it by virtue of our position".

The Directors had also the power of patronage to their advantage. Most of the Company's servants, from the Governor General down to the petty clerk, were appointed by the Directors.† They had also the authority to recall any office holder of the Company (even the Governor-General and the Governors) in India. They threatened to recall Lord Amherst in 1825, and actually recalled Ellenborough in 1844—in both cases against the declared wishes of the Board of Control. These powers of the Court, not unnaturally, made it a powerful and influential organ of the Company's government. The Board of Control could, no doubt, recall their (Directors) nominees in the Company's service, yet in view of the practical difficulties of administration the frequent recalls were neither advisable nor feasible. Hence the Board made use of this power very rarely and the Directors continued to play a decisive role in the matter of appointments.

The right of initiative in the Indian administration also rested with the Directors. They had a large staff of permanent civil servants under them. All the records in the India House were at their disposal. Thus, as compared with the members of the Board, they were better equipped to frame proposals about Indian administration. This also gave them influence and power. Besides, the Board of Control was more interested in the foreign and political affairs. It left much of the routine work in the hands of the Directors.

To sum up, the Court of Directors, despite their inferior position in the final framing of the policy, was not a mere

*Keith A.B. ; *A Constitutional History of India* P. 50

†Out of the fourteen vacancies in the civil, military and medical services of the Company, thirteen were filled by the Directors.

phantom. It was, on the other hand, a reality in the Company's affairs and it continued to exercise a considerable influence over its administration. The authors of the Report on Indian Constitutional Reforms (1918) rightly observed: "We must not conclude, however, that the supremacy of the President of the Board of Control left the Directors with no real control. Their position was still a strong one; the right of initiative still rested ordinarily with them; they were still the main repository of knowledge and, though the legal responsibility lay with the Government, they exercised to the last a substantial influence upon the details of administration".

From all that is discussed above, it may be inferred that the Board of Control and the Court of Directors continued to share the authority of the Home Government, and served as checks and balances against each other. Neither of the two bodies could altogether ignore the views or wishes of the other both in regard to the selection of the high officials and formulation of a general administrative policy.

COMMENTS ON DOUBLE GOVERNMENTS

(Merits and Demerits)

The double government established by Pitt's India Act of 1784 was a system of 'hocus-pocus which deluded public opinion, obscured responsibility and evaded Parliamentary control.' The arrangements envisaged under this system were most inconvenient and cumbrous. They were also not based on any sound principle. Pitt, the author of the system, was himself conscious of its inadequacies, as he is said to have remarked: "Any plan which he or any man could suggest for the government of the territories so extensive and so remote (India) must be inadequate." The working of this system for over a period of seventy years demonstrated its shortcomings and lent support to the objections raised by Fox in the House of Commons in July, 1784.

Demerits of the System

The dual government *provided for a weak administration of the Company's affairs.* The division of the powers and responsibilities between the Board of Control and Court of Directors—bodies representing two different authorities (the Crown and the Company)—could hardly promise an efficient and strong government. For, every government like an organism is a unity and it is

impossible to run it in two halves without detriment to its efficient and successful working. To make matters worse, the respective spheres of the Board and the Court were deliberately left vague and undefined, and even the President of the Board was not required to submit an annual account to the Parliament. All this rendered the Parliamentary control over the Company's affairs imperfect and made for a weak administration of the Company in England.

Under this system of too many checks and counter-checks, *the responsibility of the Indian Government was diffused and dissipated*. The Board of Control was vested with the power of superintending, directing and controlling the Indian affairs, while the Court of Directors was assigned power with regard to initiative in Indian administration. Obviously, under these arrangements, neither of the authorities felt itself fully responsible for the Indian administration, nor could either of the two be held solely responsible for the government of India. In the Parliamentary debates of 1853, Mr. Disraeli pointed out the anomaly of the position when he asked who the government of India was and upon whom he was to look as the authority responsible for the administration of the vast empire. To put in other words, it was not easy to answer the question which of these two bodies governed India. A careful examination of the facts, however, reveals that it was neither the Board nor the Directors that governed India. India was really ruled by the British bureaucracy in India that had slowly but steadily grown up since the days of Cornwallis.

As pointed out by Fox in his vigorous criticism, the *dual system was also unstatesmanlike in its principles*. Under this system, the power of originating the measures rested with the Board of Control. The policies to be followed by the authorities in India were also to be framed by it. But the nomination of the officers for the execution of the Board's policies and measures was the exclusive concern of the Directors. Evidently, the latter, if ill-disposed towards a particular measure, could cause difficulties and delay in its implementation. It was, however, fortunate for the system that the English spirit of accommodation smoothed the way of both the parties and the dual government, with all its drawbacks, continued to function till 1858. "Had the letter of the law been followed", writes Sri Ram Sharma, "the control of the Indian affairs from England by two independent authorities would have presented many difficulties, and this might have resulted in an early and in-

glorious end of the system.”* According to Prof. Spear this system worked because its creators were Pitt, then at the beginning of his long ministry, and his working partner Dundas, who for seventeen years was left to ‘run in’ the machine.

The dual system, much to its discredit, *was both dial tory and cumberseome*. On the average, it took two years to get an answer to a despatch sent to the Home Government from India. The reason for this inordinate delay on the part of the higher authorities was thus explained by Lord Palmerston : “Before a despatch upon the most important matter could go out to India, it had to oscillate between Cannon Row (Board of Control’s office) and India House (the office of the Company). It was proposed by one party, altered by the other, altered again by the first and sent back to the other”. This process of changing hands not unnaturally caused unexpected delay, and gave the Indian Government an opportunity to dispose of, at its own discretion, the business in respect of which instructions had been sought. So the direction of Indian affairs from England was very often in the nature of post-mortem.†

Another serious defect of the dual system was that it *tended to increase the independence of the Governor-General in respect of the Indian administration*. Even before the enactment of Pitt’s India Act, the Governor-General had in practice sufficient independence from the control of the authorities at Home. On the plea of long distance and consequent delays involved in communication between India and England (they were not yet connected by telegraphic wire) he often disposed of urgent matters, leaving the Home authorities with little choice except to approve of what he had done. The dual system gave him an additional advantage in this respect. If one of the two halves of the Home Government at any time disapproved the Governor-General’s conduct or policy, there was a good chance that the other half might support him. The history of Indian administration clearly reveals that the Home authorities were unable to restrain the activities of the Governor-Generals. The Board and the Ministry were often presented with accomplished facts which they did not think it politic to reverse.

According to Dodwell the dual government *at times put the Governor-General in a very awkward position*. The task of pleasing the two masters was in itself a difficult affair. And it

*Sharma Sri Ram : *A Constitutional History of India* P. 35

†*Ibid*, P. 39

became almost irksome when the President of the Board would ask him to follow a particular course in defiance of the Directors' wishes or the Directors would encourage him to pursue a line of conduct which the President was known to dislike. The authorities at Home, no doubt, governed the administration of India in a general way, and the Governor-General had considerable freedom in settling the affairs of India. But, despite all this, he could not easily go against the wishes of either the Board or the Directors. When Lord Ellenborough irritated the Directors by his arbitrary acts and haughty attitude, the latter did not take long to recall him from India.

The dual Government embodied in itself the possibilities of conflicts between the Court of Directors and the Board of Control. Frequent quarrels arose between the two authorities during the tenure of the system. It was, however, fortunate that except in the case of the First Afghan War, the differences arose more frequently on personal matters, appointments to high office, pecuniary claims of individuals on the Company, or the supersession of a Company's servants than over matters of principle and policy. The difficulties which originated from the appointments of Holland and Barlow embittered the relations of the Board and the Court to an unusual length. A serious difference arose between the two authorities in 1786 when the Board of Control sent four Royal Regiments to India at the Company's expenses. The Directors questioned the authority of Board and then there ensued a controversy for two years. At last Pitt introduced a Declaratory Bill in 1788 by which the supreme authority was placed in the hands of the Board of Control.

The dual system increased influence without vesting responsibility and it operated by dark intrigue rather than by avowed authority. The Board of Control, a sort of annexe to the Ministry, provided the Government with the advantage of exercising its influence on the Indian administration, while the Ministry had no responsibility with regard to the conduct of the Company's affairs. Besides, the Board of Control often conspired with the Governor General to follow a particular course distasteful to the Directors. The Directors also at times retaliated with no less vehemence. This ultimately had an adverse effect on the administration.

Merits of the System

The dual system, with all its defects, had something to commend in its favour. It provided the best possible, (if not an ideal) solution of the Company's problems. To quote its author Pitt, "It afforded a vigorous system of control with less possibility of influence ; secured the possessions of the East to the public without confiscating the property of the Company and beneficially changed the nature of the defective government without encroaching on the chartered rights of the men".

In the first place, the dual government contemplated the transfer of the ultimate direction of the Company's affairs to the British Cabinet. At the same time, it left the Company incharge of its Indian administration. Thus, the new arrangement silenced those who objected to the unconstitutional rule of the private subjects over the territories of the State. Moreover, the Directors, who had realised that something would have to be sacrificed, were also satisfied with the patronage which had been left with them.

The system, as Pitt himself pointed out, was based on adjustment and not destruction. No departure was made from the sacred charters, no attack was directed against private rights, nor was the Company stripped of its territorial possessions. But the Company's constitution was so modified as to serve the national interests. In it also lay the merit of the system.

IV—SIGNIFICANCE OF THE ACT

Pitt's India Act of 1784 is a great landmark in the constitutional history of India. *It practically placed the Company and its affairs under the control of the Parliament.* An attempt to that effect had been made earlier by the Regulating Act of 1773, but the Parliamentary control over the Company's administration had remained ineffective. Pitt's India Act of 1784 remedied the situation. Henceforth the Company's Governments in London and India were to be supervised by a Minister of the Crown—the President of the Board of Control as he was named—who was responsible to the Cabinet and Parliament. This was, obviously, a marked improvement on the existing arrangements.

The Act is also momentous in so far as it *brought the Presidencies more imperatively under the control of the Governor-General-in-Council.* In its section 31, the powers of the Governor-General-in-Council over the Presidencies of Madras and Bombay were clearly defined and it was specifically laid down that disobedience

on the part of the Presidencies would result in their suspension. The Act thus considerably strengthened the position of the Governor-General-in-Council in relation to the Presidencies, and also made a bold attempt at the unification of the British possessions in India.

The Act dealt a severe blow to the political power of the Court of Proprietors. It forbade them to alter any decision of the Directors duly approved by the Board of Control. They had no power to interfere with the ordering of civil and military affairs in India. They lost all claims with respect to the direction of the Company's Indian administration. Their powers were reduced to the receipt of dividends and the election of the Directors. This loss of their powers, according to A.B. Keith, "was a proper punishment for defying the Commons in 1782."

As Alfred Lyall points out the immediate effect of the Pitt's India Act was a great and manifest improvement in the mechanism of Indian Government, removing most of the ill-contrived checks and hindrances which had brought Hastings into collision with his Council and subordinate Governments, abolishing the defects that he had pointed out, applying the remedies that he had proposed*. In other words, the reduction in the number of the Councillors of the Governor-General and the extension of the control of the Governor-General of Bengal in Council over the other two Presidencies brought a change for the better in the Company's administration.

The Act marked a change in the powers and office of the Governor General. It immensely strengthened his position by bringing him into close political relation with the Ministry at Home. At the same time, the Act changed the nature of his office. Henceforth, the Chief Governorship of a chartered Company was not to be of a previous type but it was to be a sort of senatorial pro-consulship.

According to Prof. Sri Ram Sharma, 'The Pitt's India Act altered the foundation of the direction of the Indian affairs in England. The Court of Proprietors lost its political power. The Directors now played second fiddle to the British Government who possessed almost unlimited powers of issuing orders which the Directors were bound to obey'.†

The Act enunciated a new principle in the Company's relations

*Lyall : *The British Dominion in India*, P. 149.

†Sharma Sri Ram ; *A Constitutional History of India* P. 29

with the Indian Princes. It clearly laid down that 'to pursue schemes of conquest and extension of dominion in India was repugnant to the wish, the policy and honour of this nation.' This policy of non-intervention opened a new chapter in the politics of India and, as a result of it, the British had to suffer in prestige and dignity at the Battle of Kharda in 1795.

The Act almost *entirely altered the position of the heads of the Governments in Bengal, Bombay and Madras.* They were no longer senior colleagues or the members of the local councils. They became executive heads of the administration over which they presided.*

It may also be added in favour of the Act that *it established a system of government in London which continued to control the Company's administration till 1858.* To quote S.C. Ilbert : "The Act enunciated a system, which with its cumbrous and dilatory procedure and its elaborate system of checks and counter-checks, though modified in details, remained substantially in force upto 1858."

FURTHER READING

1. *A.C. Banerjee* : Indian Constitutional Documents Vol. I
2. *A.B. Keith* : A Constitutional History of India.
3. *C.H. Philips* : (i) India, (ii) The East India Company 1784—1834
4. *Alfred Lyall* . British Dominion in India.
5. *G.N. Singh* : Landmarks in Indian Constitutional and National Development.
6. *Sri Ram Sharma* : A Constitutional History of India.
7. *P.E. Roberts* : History of British India.
8. *Percival Spear* : A History of India.
9. *R.C. Majumdar & others.* British Paramountcy and Indian Renaissance.
10. *V.B. Kulkarni* : British Dominion in India and After.
11. *Percival Spear* : India : A Modern History
12. Report on Indian Constitutional Reforms 1918.
13. *S.R. Sharma* : Making of Modern India.)
14. *A. Aspinall* : Cornwallis in Bengal.
15. *H.H. Dodwell* : The Cambridge History Vol. V
16. *S.C. Ilbert* : The Government of India.

*Lyall : *The British Dominion in India* P. 149.

CHAPTER 5

The Charter Acts

(1793—1853)

Pitt's India Act had established parliamentary control over the Company's Indian administration. But it had failed to satisfy the British Government which felt the need of a more perfect control over the Company's affairs. Hence there was a conscious effort on the part of the Parliament to extend its control over the Company in the following years, and it welcomed every such opportunity as could help it in this direction. The periodic renewal of the Company's charter was, therefore, accompanied by definite enactments which aimed at strengthening the control of the Parliament, and altering, modifying or even abrogating the Company's privileges. Four charter Acts were passed between 1793 and 1863 regularly at an interval of twenty years and each one of them curtailed the Company's rights in favour of the Parliament.

SECTION I

THE CHARTER ACT OF 1793

This was the first in the series of the Charter Acts. Though long in its contents, it made no significant changes in the existing arrangements. It simply repeated several of the previous statutes and consolidated the law.

Circumstances favouring its enactment

The period of twenty years for which the Company had been granted the monopoly of trade in 1773 expired in 1793. The Directors of the Company then applied to the Parliament for the renewal of the charter. A new East India Bill was soon introduced in the House of Commons and it passed through the influence of the Ministers who sided with the Company.

Besides the patronising attitude of the Ministers, another factor also worked in favour of the Company. By the time the question of renewing the charter came before the Parliament, a war had broken out between France and England. And the attention of the nation was then centered in that struggle. Only a few petitions demanding the abolition of the monopoly were put up by the merchants and the Bill was passed without any opposition. According to William Pitt, "The Bill was passed with a quietness unexampled in the annals of Parliament. Even the newspapers practically ignored the discussions on the charter".*

Main provisions of the Act

1. The Company's commercial monopoly in the East was renewed for 20 years, with the important provision that private individuals would be allowed to trade to the extent of 3,000 tons of shipping.

2. The members of the Board of Control and its staff were to be paid out of Indian revenues.

3. The Governor-General and the Governors were empowered to override the majority in their Councils. And each such Council was to have only three persons as its members.

4. The Governor-General-in-Council was to have full power and authority to superintend, direct and control the Presidency Governments. At the time of his visit to another Presidency, the Governor-General was also to supersede the Governor.

5. The Governor-General was authorised to appoint one of his Councillors as Vice-President of the Council. The Vice-President was to act for the Governor-General during the latter's visit to another Presidency.

6. The Governor-General, the Governors, the Commander-

*Philips : *The East India Company* P. 71-72.

in-Chief and a few other high officials could not go out of India on leave so long as they held the office.*

7. The Commander-in-Chief ceased to be a member of the Governor-General's Council unless he was specially appointed a member by the Court of Directors.

8. The Act reiterated that the policy of non-intervention, inaugurated by the Pitt's India Act of 1784, was to be followed, and schemes of conquest and extention were contrary to the wish, honour and policy of the nation.

9. Receiving of gifts or presents by any British subject holding any office or employment under His Majesty or the Company was to be deemed and taken to be extortion and misdemeanour at law.

10. The civil servants of the Company were to be graded in ranks according to seniority of service, and promotion to a higher post was to depend upon the length of one's service. Only covenant servants of the Company were to be given the posts with pay over £500 a year.

11. The sale of liquor was made subject to the grant of a licence and power was given to the Governor-General to levy a sanitary tax in the Presidency towns.

Comments

This Act was essentially a consolidating measure. It re-enacted many of the provisions of the previous Acts and extended their application. The alternations made by it struck at points of details. No material change was effected in the government of the Indian territories. It was, however, unfortunate for the slender resources of poor country like India that the Act provided for the payment of the members and staff of the Board of Control from Indian revenues. And this obnoxious practice continued till the coming into force of the Government of India Act, 1919.

SECTION II

THE CHARTER ACT OF 1813

The Charter Act of 1793 was followed by another of its kind known as the Charter Act of 1813. This measure was comparatively more significant than the preceding one. It dealt a severe blow to Company's monopoly of Indian trade, provided for the

* This condition was altered in 1925 by a special Act of the Parliament.



education of the Indians, and asserted the 'undoubted sovereignty of the British Crown in and over the Company's territories'.

Circumstances favouring its enactment

The East India Company had been granted the monopoly of the eastern trade in 1793 for another twenty years. This period of monopoly expired in 1813. Before the Directors could get their charter renewed by the Parliament, Adam Smith's theory of *Leissez faire* (Free Trade) had gained immense popularity. This new school of political economy was strongly opposed to the monopolies and sought in free trade the State's and the individual's material prosperity. The anti monopolists, under the influence of this theory, vehemently attacked the East India Company and openly propagated the advantages that could accrue from the abolition of its monopoly.

The case of the anti-monopolists was strengthened by the Continental System which Napoleon vigorously enforced to ruin British trade and industry. This system adversely affected the British merchants and manufacturers and forced up the price of bread in the country. The situation in 1811 became most dangerous, when Britain was hit by an economic crisis and a bad harvest that left in their wake riots, wage-cuts and mass unemployment. In the face of this unusual and grave situation, the Government could not run the risk of renewing the existing arrangements. The more so, when a strong agitation against the Company's monopoly was being carried on all over the country. Lord Melville was frank enough to tell the Directors that His Majesty's Government could not recommend to the Parliament the continuance of the existing system unless they were prepared to admit private merchants to the Indian trade. To put in other words, as a result of the combination of circumstances the new and clamorous private trading interests had become so powerful in the House of Commons that they could no longer be denied their share in the Indian trade.

Besides the unfavourable conditions in England, the East India Company was also involved in some serious difficulties. Lord Wellesley's policy of war and annexation had considerably enlarged its Indian territories. With the exception of the Punjab, Sind and Nepal, almost the whole of India had passed under the British paramountcy. This had made it difficult for the Company to continue as both a political sovereign and a commercial body.

As a result of Lord Wellesley's aggressive warfare, the debt of the Company had also greatly increased. In 1805, it stood at 21 millions with an annual interest of about 28 lakh pounds. The Court of Directors in 1808 applied to the Government for substantial loan. This led to the appointment of a Committee of House of Commons to enquire into the financial difficulties of the Company*. On the report of this Committee the Parliament made provision for loans to the Company, but it also felt the need of some striking changes in the existing arrangements. In view of these unusual circumstances it was almost a foregone conclusion that its Directors would meet a strong opposition at the time of the renewal of the charter in 1813.  

No sooner did the Directors apply for the renewal of the charter than there started a heated controversy in the House of Commons. Some of its members vigorously asserted that the Company's monopoly of Indian trade be immediately abolished and that it should be thrown open to all British subjects. The Directors of the Company advanced two main arguments in support of the existing system. First, if the trade profits of the Company were taken away by the abolition of its monopoly, its revenues would not be sufficient to carry on the government of its territory. Secondly, there was every possibility of political dangers which might arise from an unlimited resort of Europeans to India. The Directors also petitioned the House for leave to be heard by counsel and bring forward witnesses in support of their claims. Their request was granted, and distinguished witnesses like Warren Hastings, Lord Teignmouth, Mr. Charles Grant, Colonel Malcolm and Colonel Munroe came forward to affirm that the trade of India could be conducted with advantage only through the agency of the Company. But all these efforts of the Directors could not be of any avail in the face of the pressure of the private trading interests which had gathered sufficient strength in the House of Commons.

While the Act of 1813 was thus in the making, a virulent propaganda was carried on in England against the ban on missionaries. No less than 850 petitions demanding withdrawal of the ban were laid on the table of the House of Commons. This

*This Committee submitted the famous Fifth Report in July, 1812. According to S.C. Ilbert, "This Fifth Report is still a standard authority on Indian land tenures, and the best authority on the judicial and political arrangements of the time."

propaganda also had a decisive effect on the framework of the Act.

After all the formalities had been completed in the House of Commons, the Government submitted its proposals to the Parliament in 13 resolutions. These resolutions formed the basis of the Charter Act of 1813.

Main Provisions of the Act

1. The preamble to the Act formally asserted the undoubted sovereignty of the British Crown over the Company's territories'.

2. The Indian possessions and revenues were granted to the Company for the next 20 years.

3. The Company was deprived of its monopoly of Indian trade, which was thrown open to all the British subjects. It (Company) was, however, allowed to retain the monopoly of the China trade and of trading in tea.

4. The Company was required to keep their trade and revenue accounts separate and distinct.

5. The British merchants and missionaries were allowed to come and settle in India under a strict licence system. The licences were to be granted by the Court of Directors or, on their refusal, by the Board of Control.

6. The Act provided that one lakh of rupees was, henceforth, to be set apart annually for the encouragement of education, literature and sciences among the inhabitants of the British territories in India.

7. The powers of superintendence and control exercised by the Board of Control were increased and further defined.

8. The Company was allowed to make all appointments as before, but the approval of the Crown was made necessary in case of appointments to higher offices (Governor General, Governors etc.), and of Board of Control in certain cases.

9. The Company was required to appoint one Bishop and three Archdeacons to look after the religious welfare of the Europeans in India. This developed into the ecclesiastical department of the Government of India.

10. The Act regulated the application of the Indian revenues, placing the different charges on the Company's revenue in order

of preference.*

11. The Act made a provision for the training of Company's civil and military servants.

SIGNIFICANCE OF THE ACT

Though the Charter Act of 1813 retained the old constitution without any modification, yet it was significant for various other reasons.

It abolished the Company's monopoly of Indian trade, which had been for long a target of vehement criticism. Trade with India, except trade in tea, was now thrown open to all British subjects. The East India Company, as a result of it, became one of the many commercial competitors. This was, indeed, a great achievement of the Company's opponents, who had secured the freedom of trade with India for every person in England. With the abolition of the Company's monopoly of Indian trade, the British trade worth 13 million pounds in 1813 rose to 100 million pounds in 1865. The British trading class made huge profits and England made good the financial loss, which she had suffered on account of Napoleon's Continental System.

The abolition of the Company's monopoly of India trade, however, proved unfortunate for Indian economy. In the words of Dr. Tripathi, "It opened India to the British free traders and exposed her to the full blasts of the Industrial Revolution. It precipitated the destruction of her age-old cotton industry, clinched her dependence on raw material production, and subjected her primary producers to the vagaries of international economic forces".† With the mass migration of British merchants to India, our country was exposed to unknown exploitation. The British merchants, with their superior goods and cheaper rates, soon ousted the Indian traders. The power-looms of Lancashire silenced the ancient hand-looms of India, with the result that agriculture became practically the sole occupation of the people‡. To quote Dr. Ishwari Prasad,

*The maintenance of forces was to be the first, the payment of interest the second and the maintenance of civil and commercial establishment the third charge on the Company's revenue.

†. *Tripathi Dr. A. : British Paramountcy and Indian Renaissance* P. 1077.

‡. According to Mr. Ram Gopal. 'it was not so much by machine as by political power that India was made to bury its own textile industry.' *British Rule in India* P. 18.

“From this date (1813) approximately begins the ruin of Indian industries, the growing dependence upon agriculture and the consequent poverty of our people”.

The Charter Act of 1813 evinced beyond doubt that Parliament in England had great regard for the public opinion. In spite of the distinguished witnesses in support of the Company's claims, in spite of the untiring efforts of the Directors to uphold the old system, and in spite of some very sound arguments in favour of the existing arrangements, the House of Commons could not but yield to the clamorous voice of the nation. From the political point of view, this victory of the public opinion was a matter of great significance.

The Act is also given the credit of making provision for the education of the Indians. Its admirers point out that it was by the Charter Act of 1813 that the Company, for the first time, recognised its responsibility of imparting education to its Indian subjects. But be it noted that this provision practically remained a dead letter. And the money granted for the purpose was allowed to accumulate for more than 20 years, as the Government could not decide the most useful method of its investment. Nevertheless, the Act provided a basis for progress of English education and therein also lay its significance. To quote Prof. Percival Spear, “From this clause the modern Indian educational system has sprung.”*

The removal of ban on the admission of the missionaries into India had a very far reaching effect. Within a period of less than a decade, a large number of them came into India. They soon started mission schools and colleges and made them the instrument for the spread of Christianity. It is rightly pointed out that in the years following the enactment of this measure (Charter Act, 1813), the missionaries were more active in the field of education than the Government.

SECTION III

THE CHARTER ACT OF 1833

The Charter Act of 1833 was a measure of great constitutional importance. It made significant changes in various directions, and some of them earned wide admiration. According to Lord Morley, ‘The Act was certainly the most extensive measure of Indian Government between Mr. Pitt's famous Act of 1784 and Queen Victoria's assumption of the Government of India.’

*Spear : *A History of India* P. 126.

Circumstances under which it was enacted

The commercial and political privileges of the Company had been renewed in 1813 for 20 years. This period of two decades expired in 1833 and the Company, as usual, approached the Parliament for the renewal of the charter. As chance would have it, a wave of liberalism and reform was then sweeping over whole of England. The doctrine of the Rights of Man was being extolled by the contemporary thinkers. Dignity of mankind had been recognised, and such liberal measures as the Abolition of Slavery (1833), Poor Law, (1834), the Factory Act (1833), Law Reform etc. etc. were in the offing. As a result of the Reforms Act of 1832, a reformed House of Commons had come into existence. Besides, there was a popular clamour for the elimination of the Company's mercantile interests. An unrestricted admission of Europeans into India was also being demanded. A section of the people in England believed that the reform of the Indian laws and her (India's) educational system was quite necessary. In view of this changing mood of the people, the Directors had in 1828 appointed Lord William Bentinck as Governor-General of India. The new Governor-General had attempted liberal measures for the improvement of the country and the amelioration of her people. Lord William Bentinck was, no doubt, a true liberal of his day, yet the measures associated with him as well as with Munro and Elphinstone were largely due to the new liberal spirit in England.*

When England was breathing in an atmosphere of reform and free trade, men like Grey, Macaulay and James Mill were at the helm of affairs. Grey, who had played a leading role in the enactment of the Reforms Act of 1832, was the Prime Minister of England. Macaulay held the office of the Secretary to the Board of Control. He was also incharge of the charter negotiations with the Directors†. James Mill was then the examiner of Indian correspondence at India House. All these persons, being fervent lovers of reforms, had great influence on the Bill which was introduced at a time, when liberalism was on the ascendancy.

*The Directors, as a matter of fact, hoped that by following a liberal policy of reform in India, they would save themselves from any difficulty at the time of the renewal of the charter.

†His influence on the Board was overwhelmingly supreme. It can be well judged from the words of Charles Grant, the President of the Board, who assured Macaulay (with tears in his eyes) that he did not know what the Board would do without him.

Controversy over the Bill

In spite of the various precautions on the part of the Directors in London, their demand for the renewal of the Charter was subjected to severe criticism. As the Bill was introduced in July, 1833, there started a heated controversy in the House of Commons. A strong section of it advocated the transfer of the Government of India to the British Crown. The Company's position as 'the union of the trader and the sovereign' was particularly attacked. Mr. Buckingham observed that 'it looked preposterous to leave in the hands of a Joint Stock Company the sovereignty of a larger population, the disposal of a larger revenue, the command of a larger army, than are under the direct management of the executive government of the United Kingdom'. He also suggested that the Supreme Council (G.G.'s Council) in India must admit to itself a few representatives of both British and Indian population in order to make a beginning of representative institutions.

But Lord Macaulay in his memorable speech on July 10, 1833 in the House of Commons vigorously stressed the desirability of retaining the Company as the organ of government for India. He did not favour the idea of transferring the Indian administration to the British Crown. He was strongly of the opinion that the House of Commons had neither interest nor necessary time 'to look into Indian affairs as we look into British affairs'. He cited a very interesting instance with the remark that 'the attendance in the House of Commons on a Turnpike Bill or Railroad Bill was found to be larger than on a measure proposed for the government of a hundred millions of human beings in India.'

Referring to the indifference of the British public to the Indian affairs, he facetiously observed that 'a broken head in Cold Bath Fields produces a greater sensation among us than three pitched battles in India'. Lord Macaulay also referred to the various advantages that England had derived by retaining the Company as an instrument of the Indian governance. He said, "It is, as a corporation, neither Whig nor Tory, neither high-church, nor low-church.... It has constantly acted with a view, not to English politics but to Indian politics. We have seen the country convulsed by faction (agitation concerning the First Reform Bill).... And amidst all these agitating events the Company has preserved strict and unsuspected neutrality. This is, I think, an inestimable advantage*. In reply to Buckingham's proposals and contentions,

*Macaulay's speech on the Charter Act of 1833 : *Indian Constitutional Documents Vol. I* pp. 224-226.

Lord Macaulay observed that India was unfit for representative institutions and that the House of Commons (on account of excessive work and lack of interest) could not be an efficient check on abuses practised in India. These weighty and well-worded arguments of Macaulay had great effect on the House of Commons and the Company was granted a charter for another term of 20 years.

I—MAIN PROVISIONS OF THE ACT
or
(CHANGES INTRODUCED BY THE ACT)

The Charter Act of 1833 was a very comprehensive measure. It not only brought about important changes in the position and status of the East India Company, but also laid down a broad principle of British policy towards Indian employment. The administration of the Company in India also witnessed a significant change in the form of legislative centralisation.

I—Changes in the Home Government

①. The Company was granted its territorial possessions and its administrative and political powers for another term of 20 years, but these were to be held by the Company 'in trust for His Majesty, His heir and successors'.

✓2. Under the Charter Act of 1813 the Company had been allowed to retain the monopoly of China trade and of trading in tea. The Act of 1833 abolished this monopoly with effect from 22 April, 1834 and required the Company to close down its commercial business with all convenient speed so that it might concentrate wholly on the work of administration.

③. The Act provided for the payment of 10½% dividend to the share-holders from Indian revenue, and for the accumulation of 12 million pounds for the purchase of the Company's stock. There was also a provision for the repayment of the capital of the East India Company in forty years or earlier, should the Company be deprived of its rule over India.

④. The Charter Act of 1813 had allowed Europeans to come to India under a strict system of licences. This restriction was now removed, but adequate precautions were taken to minimise the evils likely to arise from the free admission of Europeans into India.

II—Changes in the Company's Central Government in India

1. To achieve greater unity and cohesion, all legislative powers of the Government of India were vested in the Governor-General and his Councillors to be styled the Governor-General of India-in-Council (not as Governor-General of Bengal as heretofore).

2. The superintendence, direction and control of the whole civil and military government of the Company's territories in India were also vested in the Governor-General-in-Council.

3. The Act of 1833 added to the Governor-General's Council a fourth ordinary member known as the Law Member. He was to assist the Governor-General and his Councillors in matters of legislation. And as such he was to sit and vote only at the meetings called for the purpose of law-making. He had no voice in ordinary executive matters. He was to be an English Jurisconsult of recognised ability. Mr. Macaulay was appointed the first Law Member to the Council.

4. The Governor-General-in-Council were empowered to appoint a commission to be known as 'the Indian Law Commission'. This commission was to fully inquire into the jurisdiction, powers and rules of the existing courts of justice, police establishments, nature of all laws, (civil, criminal, written or customary) and to make reports suggesting the necessary alternations.

III—Changes in the Presidency Governments

1. The Governments of Madras and Bombay were deprived of their power of legislation to be concentrated in the Governor-General-in-Council.

2. In financial matters also the Presidencies were subordinated to the control of the Governor-General-in-Council. No Governor had the power of creating any new office, of granting any new salary, gratuity or allowance, without the previous consent of the Governor-General.

3. For greater efficiency, the over-grown Presidency of Bengal was to be divided into two: the Presidency of Fort William and the Presidency of Agra. This was not, however, immediately given effect to.

IV—Section 87—Indianisation of the Civil Services

The Act, in its Section 87, embodied the most important principle of British policy towards Indian employment. It

declared that 'no native or natural born subject of His Majesty resident in India shall, by reason only of his religion, place of birth, descent, or any of them be disabled from holding any place, office or employment under the said Company.'

This provision legally removed a great racial disability, making every Indian by law equally admissible to any office in India. In his speech on the Charter Act of 1833, Macaulay referred to this provision as 'that wise, benevolent and noble clause'. This clause also stirred the imagination of the Indians and stimulated their faith in the British sense of justice.

V—Abolition of Slavery

Provision was also made for the abolition of slavery in India and the Governor-General-in-Council were required forthwith to take steps in this direction.

II—LEGISLATIVE CENTRALISATION

(As introduced by the Act)

The Regulating Act of 1773 had initiated the process of centralisation by creating the office of the Governor-General in 1773. The Act of 1833 marked the culmination of that process. As a result of this measure, the Presidency Governments were deprived of most of their legislative powers, which were vested in the Governor-General-in-Council. The control of the Supreme Government over the Presidencies was made more effective. This arrangement, in spite of its various defects, continued to exist for the next about 28 years till the Councils Act of 1861, for the first time, initiated the policy of slow decentralisation.

Reasons for Centralisation

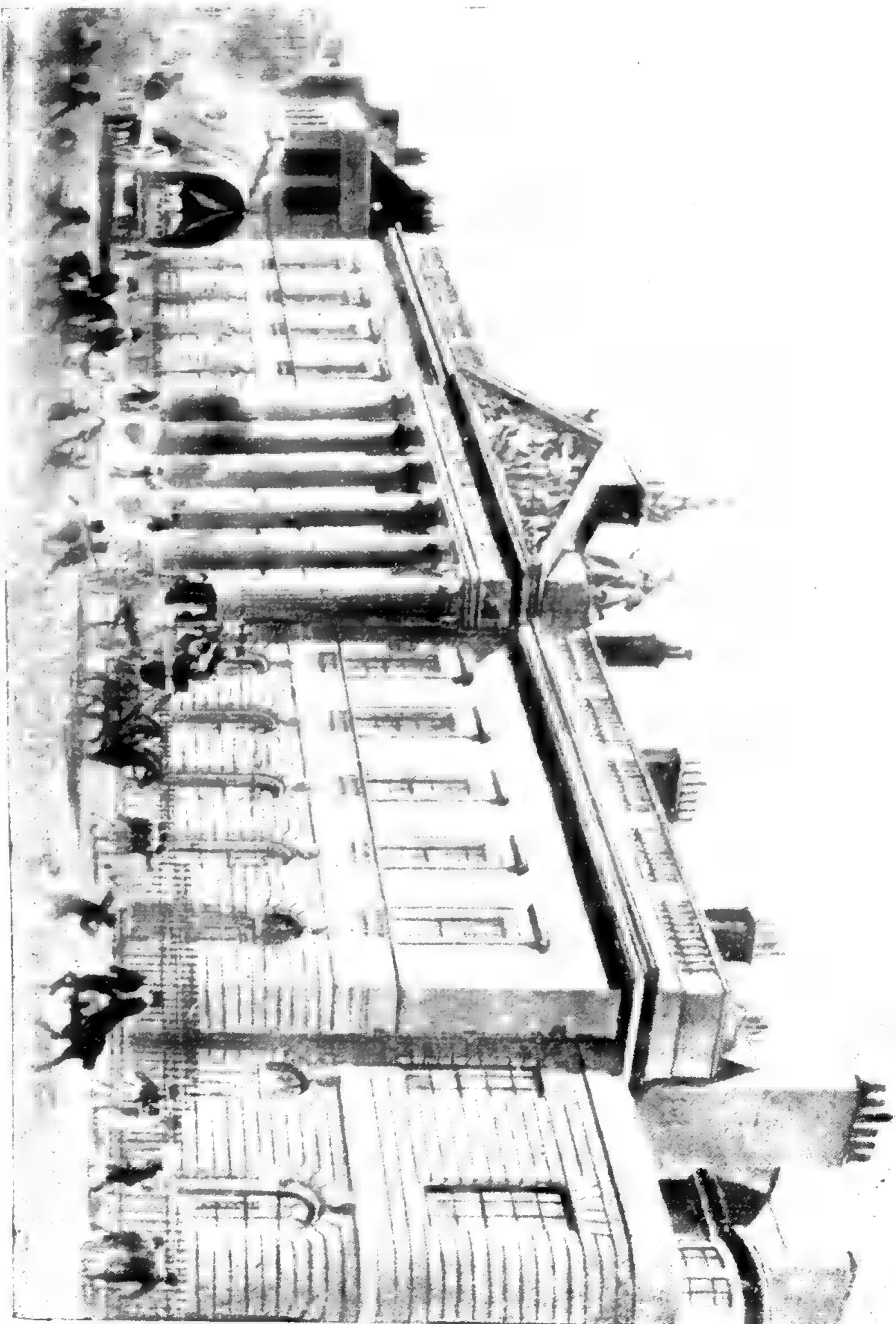
The superintendence, direction and control of the Presidencies had already been vested in the Governor-General-in-Council. But this control of the Supreme Government could not be effective primarily, for two reasons: First, the Governor-General-in-Council hardly exercised their power. Secondly, the Supreme Government could not take timely steps to check the activities of the Presidency Governments. Their position in money matters was more or less irksome. After having spent money on their own initiative the Governments of Bombay and Madras would often inform it. In such circumstances, the Supreme Government became completely helpless. This was, obviously, a grave defect of the administrative system.

Before the enactment of the Charter Act of 1833, there were five different bodies of statute law in force in India. They were : Charter Acts, Parliamentary Acts, the Governor-General and his Council's orders, Presidencies' laws and Supreme Court's orders. These different kind of laws, enacted by different bodies, caused great difficulties and confusion. Sometimes, laws made by the Presidency Governments conflicted with those of the Supreme Government, sometimes. Supreme Government found its power of law-making quite insufficient to meet a particular situation; and, sometimes, complications arose on account of ill-drawn and ill-expressed regulations. In short, there existed many a failing in the process of legislation, which not only hindered the efficiency of administration but also called for its centralisation.

The legislative centralisation was also rendered necessary by the free ingress of the Europeans in India. The Act of 1833 had unsealed for the first time the doors of the British India to British subjects of European birth. They were given the right, however qualified, to live in the country and even to become occupants of land. There was every prospect of a considerable increase in their number. It was, therefore, considered just as well in the interest of administration that they should live under the control of the same laws as were enacted by the Company's central government in India.

Legislative Centralisation Explained

To remedy the situation created by the entry of Europeans in India and to do away with the defects in the process of legislation, the Governor-General-in-Council were empowered to make laws and regulations (a) for all persons, (b) for all courts of justice (c) for all places and things whatsoever within the British territories in India, (d) for all servants of the Company within the domains of the princes and states in alliance with the Company, (e) for repealing, amending or altering any law in force or hereafter to be in force in British territories in India. These extensive powers of the Governor-General-in-Council were, however, placed under some constitutional restrictions. The Governor-General-in-Council could not make laws and regulations which might in any way affect (1) any of the provisions of the Charter Act of 1833, (2) any prerogative of the Crown or authority of Parliament, (3) any part of the unwritten laws or constitution of the United Kingdom and (4) constitutional rights of the Company.



INDIA HOUSE 1833

(The East India Company's Office in London)

It was also stated that the Acts passed by the Governor-General-in-Council were to have the same force and effect as any Act of British Parliament, and would be valid throughout the British territories in India. Moreover, they were to be deemed to have been noticed by all the courts without the necessity of registration. The Presidencies had been deprived of their power of law-making, but they had the right to propose to the Governor-General-in-Council drafts or projects of any laws or regulations, which they thought expedient. This concession to the Presidencies was not of much use and reaction against the local independence had led to the other extreme viz. over-centralisation.

The authors of the Act, as a matter of fact, had a mind to centralise the whole civil and military government of the territories by vesting it in the Governor-General-in-Council. They had also the plan to reduce the status of the Presidencies to a still greater degree. The Bill, too, in its original form had provisions contemplating a complete and paramount centralisation. But such an ambitious idea could not be realized in practice, presumably on account of distance and difficulties of communication between the different parts of British dominions in India. Hence, the Bill as finally enacted by the Parliament (a) vested the Governor-General-in-Council only with the superintendence, direction and control of the whole civil and military government in India, (b) introduced legislative centralisation, (c) curtailed the financial powers of the subordinate governments and made it obligatory for them to seek the sanction of the Central Government before incurring any expenditure, however insignificant.

Merits of the Measure

The legislative centralisation, as introduced by the Act, strengthened the position of the Central Government in relation to the Presidencies. It made its control over the subordinate governments real and effective. Prior to the enactment of this constitutional measure, the Governor-General-in-Council had the power to superintend, direct and control the subordinate governments, but that power was rarely exercised and hardly feared. The control of the Central Government over the Presidencies was now firmly established and clearly defined.

The legislative centralisation, to its credit, brought the Supreme Court under the jurisdiction of the Governor-General-in-Council. Before this Act, no regulation was binding on these courts until and unless it was registered by them, and such registration was

wholly at the discretion of these courts themselves. The result was that the legislation of the Governor-General of Bengal-in-Council or of the Governors of Madras and Bombay was normally not binding on the Indian residents of the Presidency towns and the European residents in or outside them. This glaring defect of the legislative system was now removed, as the legislation of the Governor-General-in-Council became binding on all persons and all courts of law.

As a result of this measure, the financial economy in the Company's administration was also secured. Previously, the Presidencies were practically free from the control of Calcutta Government in matters of expenditure. They would spend money on their own initiative and inform the Supreme Government after the expenditure had been actually incurred. The Governor-General-in-Council could not be an effective check on the subordinate governments. But now it was clearly provided in the Act that local governments must receive the sanction of the Governor-General-in-Council before incurring even an insignificant expenditure. This centralisation in matters of finance checked the extravagance of the Presidencies.

The legislative centralisation tended to remove uncertainty with regard to the hitherto inadequate and ill-defined powers of the central as well as subordinate governments. It conferred upon the Governor-General-in-Council the power to make laws for the whole of India, while the local governments were deprived of their legislative powers. They could now, at the most, propose to the Central Government drafts or projects of any laws, which they thought expedient. This demarcation in the legislative sphere had a salutary effect. It went a long way in removing inconsistencies in the sphere of law-making.

Demerits of the Measure

The highly centralised system of administration set up in 1833, no doubt worked for more than twenty years, yet it was not completely free from defects. The Governor-General-in-Council were empowered to legislate for all the Presidencies. It was in itself a very difficult affair. On account of the underdeveloped means of communication, it was not possible for the Governor-General to go to the Presidencies too frequently, look into their needs and then make laws suited to their requirements. Moreover, the excess of work did not allow the Governor-General to give a fair

discharge to his manifold duties, with the result that he could not attend properly even to broad questions of policies and principles. This was, obviously, not in the interest of efficient administration.

The legislative centralisation had no good effect on the provincial administration and, primarily, for two reasons. The Presidency authorities, equipped with the necessary knowledge of local needs and conditions, were not authorised to make laws for the territories under their jurisdiction. The Governor-General, on other hand, did not have the time and facilities to enact satisfactory measures for the Presidencies. This state of affairs gave rise to discontent and encouraged inefficiency, maladministration and unnecessary complications.

As a consequence of the legislative centralisation, the importance of the local governments was reduced to a considerable extent. Deprived of their legislative and financial powers, they became mere agents of the central government and as such they lost their independent existence.

III—SIGNIFICANCE OF THE ACT

The Charter Act of 1833 is a landmark in the constitutional development of India. It was more comprehensive and farther reaching in effect than any other measure enacted by the British Parliament for India in the nineteenth century. According to Lord Morley, 'the Charter Act of 1833 was certainly the most extensive measure for Indian Government between Pitt's famous Act of 1784 and Queen Victoria's assumption of the Government of India.' Verily, the Act had much to commend in its favour and stands distinguished from other Acts of the 19th century.

The Charter Act of 1813 was no match for it. It only threw open to His Majesty's subjects the trade with India. It did not introduce any striking modification in the old constitution. The subsequent Act of 1853 also did not accomplish anything significant. It merely simplified the working of administration. The significance of the Act of 1858 was limited to the transfer of India to the Crown. The Indian Councils' Acts also could not claim to be a very extensive measure. But the Charter Act of 1833, in striking contrast to all these parliamentary measures, effected important changes in various directions. It also laid down the broad principle of British policy towards Indians' employment. To put in other words, it emphatically reiterated and extended the good

intentions expressed by the British authorities twenty years earlier.*

The Act of 1833 closed down the commercial business of the Company. In 1813 the British trade with India had been thrown open to His Majesty's subjects but the Company was allowed to retain its monopoly of the tea trade and trade with China. The Charter Act of 1833 deprived the East India Company of even these commercial privileges and required it to wind up its business with all the convenient speed. The Company, thus, ceased to be a mercantile corporation, which it had been since its inception in 1600. This complete abolition of the Company's monopoly of trade was quite significant. It silenced the criticism of the commercial interests opposed to the Company and also broke up the undesirable combination of trade with political power. The Company now became a purely administrative body with only political functions. This position it retained till its extinction in 1858.

The separation effected of the functions of the state from all commercial speculations served to give a more elevated tone to the views and policy of the Court of Directors, and to impart a more efficient character to their administration. Relieved of the management of a large mercantile establishment and the influences inseparable from it, the Directors concentrated wholly on the work of administration. They also passed for the servants of India measures, which were marked by a degree of moderation, wisdom and beneficence unexampled in the history of conquered dependencies.

The Charter Act of 1833 made a bold attempt to achieve greater unity and cohesion for the governance of India. It vested all legislative powers of the Government of India in the Governor-General-in-Council. The Governor-General was styled as 'Governor-General of India'.† Besides, the Presidencies were deprived of their legislative powers and were completely subjected to the control of the Supreme Government. This legislative centralisation not only accelerated the pace of unification but also provided uniformity to the working of administration. According to Dr. R. C. Majumdar the most important effect of these provisions (relating to legislative centralisation) was to bring the Supreme Courts under the jurisdiction of the Governor-General-

*. The principle of competition had been suggested by Law Grenville as early as 1813.

†Previously he was designated as 'Governor-General of Fort William and Bengal.

in-Council. This marked a great improvement in the existing arrangements and brought definiteness in the sphere of legislation.

The Charter Act of 1833 made provision for the appointment of the first 'Indian Law Commission' and thereby sought to re-organise the existing legal system. Macaulay was specially entrusted with the task of drafting laws for India, a job, which he admirably executed. As a result of the labours of this Law Commission, the Indian Penal Code and the Codes of Civil and Criminal Procedure eventually came into being. The Indian Penal Code, in the words of Alfred Lyall, 'is a standing tribute to Macaulay's legal acumen and proficiency'. The comprehensive consolidation and codification of the varieties of laws was, indeed, a unique achievement of the Act. It went a long way to remove confusion as to the nature of the laws and regulations, the sources of their origin and the conflicting judicatures by which they were administered. Besides, codified laws began to be applied all over the British territories in India.

The Charter Act of 1833 made the first attempt to differentiate the legislative from executive functions by providing for a Law Member. It also laid down that the transaction of the legislative functions required the presence of at least three members as distinguished from the executive functions which could be performed by the Governor-General and one ordinary member of the Council. In view of these provisions, William Grey, the Lieutenant Governor of Bengal, went so far as to say that the Act constituted what was 'virtually' a separate legislative body. But this is too bold an assertion. It would be more correct to say that the emphasis of the Act was more on the differentiation of functions than on the composition of a law-making body, because the Governor-General was fully entitled to make laws with or without the fourth member.

The Charter Act of 1833 was most momentous in so far as it embodied the principle of British policy towards Indian employment. In its section 87, the Act declared that 'no native or natural born subject of His Majesty in India shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any place, office or employment under the said Company'. This declaration of the British Government was unique and laudable. The British statesmen of the time extolled it in glowing terms. Mr. Macaulay referred to this provision as *that wise, benevolent and noble clause*. He also added, '*To the last day of my life, I shall*

be proud of having been one of those who assisted in the framing of the Bill which contains that clause'. Explaining the meaning of that provision, the Directors observed ; "Fitness is henceforth to be the criterion of eligibility.... There shall be no governing caste in British India; whatever other tests of qualification may be adopted, distinctions of race or religion shall not be of the number...no subject of the king, whether of Indian or British descent, shall be excluded from the covenanted service'. Lord Landsdowne pointed out that this provision legally removed a great racial disability. Now every Indian was by law equally admissible to every office in India. Mr. Ramsay Muir, the celebrated historian of England, acclaimed it as an unparalleled declaration, which a ruling class can announce in regard to its recently conquered subjects.

The declaration stirred the imagination of the educated Indians also. It stimulated their interest in the British sense of justice. They looked upon it as the Magna Carta, which would secure for them the due share in the administration of their own country. They hoped to be appointed to the official situations.

The assurance held forth by this clause of the Act was, no doubt, commendable. It was a grandiose gesture worthy of the reformed Parliament. But the actual progress towards the declared policy was 'heart-breakingly slow and insipid'. The declaration was rather more honoured in breach than in the observance by those, who were entrusted with the governance of India.* Even A.B. Keith observed that this excellent sentiment, however, was not of much practical importance. since nothing was done, despite the views of Munro, Malcolm, Elphinstone, Sleeman and Bishop Herber, to repeal the provision of the Act of 1793, which excluded any but covenanted servants from occupying places worth over £500 a year.† The Directors' remark that the object of this clause was to remove disqualifications and not to ascertain qualifications, perhaps, implied that no marked difference would be occasioned. Obviously, the assurance held forth in the Act was not intended to be carried into practice and the attempts to explain away the significance of Section 87 added insult to injury. Lord Lyton was of the view that there was nothing wrong with the intentions of the British Government. The British statesmen were keen to honour the declaration. But, unfortunately,

*Dr. Ishwari Prasad : *History of Modern India* P. 161.

†Keith : *A Constitutional History of India* P. 135.

the circumstances of the British Empire ruled out the complete fulfilment of the pledge embodied in the Act.

Whatever the practical outcome of this declaration, the intentions of its authors could hardly be doubted. And the spirit in which they incorporated Section 87 was worthy of all commendation. Besides, though the declaration remained unimplemented for years together, yet it did not allow the hopes of the Indians to die. The educated Indians, encouraged by the assurance given in the declaration, went abroad for higher studies. And after they had qualified themselves for holding high offices in India, they demanded their share in the higher services. Failure on the part of the British Government created a great discontent and dissatisfaction and thereby provided the Indians with a cause to muster their strength against the British. The declaration of 1833, thus, proved a sheet-anchor of the Indian political agitation.

It may also be added to the credit of the Act that it made for the abolition of the slavery. The Governor-General-in-Council were required forthwith to take steps to mitigate the state of slavery, for ameliorating the conditions of slaves, and for extinguishing slavery throughout the Indian territories as soon as such extinction should be practicable and safe.

SECTION IV

THE CHARTER ACT OF 1853

This was the last in the series of the Charter Acts enacted between 1793 and 1853. Except for introducing structural changes, it ushered in no new spirit either in policy or in administration.

Circumstances leading to its enactment

The Charter Act of 1833 had made a declaration of the British policy towards Indian employment. The assurance held forth in this declaration roused high hopes in the minds of the educated Indians. Several of them proceeded to England to qualify themselves for holding high offices. They spent time, money and energy to obtain necessary knowledge and qualifications. But on their return to India they were greatly disappointed; for the Government did not fulfil the promise of fair deal given to them in Section 87 of the Act of 1833. Charles Grant and his successor Hobbouse, who acted as Presidents of the Board, did not put the scheme in operation and retained the old system of recruitment. The Directors, taking advantage of the connivance of the Board,

continued to enjoy their power of patronage. As a result of it, the Indians could not derive any benefit from Section 87 for many a year. Mr. Cameron, a member of the Governor-General's Council and Chairman of the Indian Law Commission, pointed out the futility of the section 87, when he wrote : "During the last twenty years that have elapsed not a single native has been appointed to any office except such as they were eligible before the statute". Thus, the declaration 'remained for long in the tantalising realm of unfulfilled aspirations' and caused a great discontent and dissatisfaction among the Indians.

As the time for the renewal of the charter drew near, the Indians became determined to oppose the continuance of the Company's rule. It was, indeed, a strange phenomenon. Hitherto, the opposition was confined to the Englishmen, but in 1853 it came from the Indians. The inhabitants of the Presidencies submitted signed petitions to the Parliament requesting them not to extend the Company's rule any further. They also pleaded for the fulfilment of the pledge given to them in the Act of 1833. The Bengal Petition was of a particular interest in so far as it asked for (i) a separate legislature for India, (ii) provincial autonomy to the Presidencies and (iii) competitive examinations for recruitment to Civil Service.

These demands of the Indians could not be ignored. The Parliament in 1852 appointed two Select Committees to inquire into the state of affairs. These Committees examined a large number of witnesses and collected a vast amount of evidence on the state of India. On the basis of these enquiries the Charter Act of 1853 was framed.

I--MAIN PROVISIONS OF THE ACT or (CHANGES INTRODUCED BY THE ACT)

The Act contained a series of provisions, which brought about changes both in the Company's set-up at home and in India. The most important of these changes were as under :

(A) Changes in the Home Government

1. The Act renewed the powers of the Company and allowed it to retain the territories and revenues of India, not for 20 years as before, but only until 'the Parliament should otherwise provide'.

2. The number of the Directors was reduced from 24 to 18, six of them were to be appointed by the Crown.

3. The quorum for the Court of Directors was fixed at 10 instead of 13 as before. The object of reducing the number was to enable the Crown's nominees to be in a majority in a thinly attended meeting.

4. The salary of the President of the Board of Control was increased to the level of that of a Secretary of State.

5. The Act abolished the system of nomination to Indian Civil Service by the Court of Directors, and introduced in its place the system of open competition.

(B) Changes in the Company's Governments in India

1. The Act created for the first time a separate Legislative Council for India. This Council was to consist of 12 members viz. the Governor-General, the Commander-in-Chief, 4 members of the Governor-General's Council and 6 additional members or legislative councillors. The six Legislative Councillors were to be Chief Justice of Bengal, one judge of the Calcutta Supreme Court and four Civil Servants with two years' standing appointed one each by the Governments of Bengal, Madras, Bombay and the N.W.P. (Agra). The judges were appointed to strengthen legal element in the Legislative Council.

2. The Legislative Councillors were entitled to sit or vote only at those meetings of the Council, which were held for legislative purposes.

3. The procedure of the Legislative Council was modelled on that of the Parliament. It could question and discuss the policy of the executive. The Governor-General had, however, the power to veto any bill of the Legislative Council.

4. The Law Member of the Governor-General's Council was made the full-fledged member of the Council. He could, henceforth, sit and vote also at its meetings held for executive purposes.

5. The Act empowered the Governor-General to appoint, with the permission of the Board of Control and the Court of Directors, a separate Governor or Lieutenant-Governor for Bengal. This was provided to relieve the Governor-General of his administrative burden. A separate Lieutenant-Governor was appointed in 1854.

6. The Act authorised the Crown to appoint a Law Commission in England to examine and put into shape the mass of

reports and drafts of Acts, which were left unfinished by the Indian Law Commission. As a result of the labours of this Commission, the Penal Code and Civil and Criminal Procedure Codes were at last enacted into law.

7. In view of the recent annexations made by Lord Auckland, Lord Hastings and Lord Dalhousie, the Act empowered the Directors to create one more presidency. In consequence, the Lieutenant-Governorship of the Panjab was created in 1859.

II—SIGNIFICANCE OF THE ACT

The Charter Act of 1853 was a measure of great constitutional importance. Unlike the previous parliamentary measures, *it fixed no definite period for the charter*. On the other hand, in its section 15, the Act clearly stated that the territories and revenues of India were to be held by the Company in trust for the Crown until Parliament should otherwise direct. It was *a clear indication to the fact that the Company's rule over India was only a question of time*, and that the Parliament could relieve it of its political functions at any time it liked. Hardly five years after the renewal of the charter, the Company's possessions in India passed on into the hands of the Crown.

The Act created for the first time a separate Legislative Council for India, which eventually developed into the Indian Parliament. The executive functions were differentiated from the legislative functions, and the Council was much better equipped in legal and provincial knowledge. In the words of the authors of the Montford Report, 'legislation, for the first time, was treated as a special function of the government, requiring special machinery and special processes'. Besides, the representation which had been given to the Presidencies in matter of legislation was also significant. By providing for the appointment of provincial representatives, the Act recognised the principle of local representation in the Indian Legislature, which thence onwards became an important part of reform schemes. Furthermore, the provincial representatives were sure to provide the much-needed local knowledge to the new council to enable it to cope with its extended functions in law-making.

The Charter Act of 1853 dealt a severe blow to the already dwindling powers of the Directors.

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CHAPTER 6

Transfer of India to the Crown

(ACT FOR THE BETTER GOVERNMENT OF INDIA)

|| About a year after the departure of Lord Dalhousie from India, there broke out in our country a great revolution variously termed as the Indian Mutiny, the Sepoy War, the Great Revolt or the First War of Independence. This uprising lasted a little over a year (May 1857 to June 1958), but it was a year of terribly bitter experiences. Besides the sieges, pitched battles, massacres and revenges, there were also acts of treachery and treason. The revolt was finally suppressed and order restored, but it had very far-reaching effects. It drove the last nail into the coffin of the Mughal Empire ; it laid to dust the last hope of a Maratha revival, and it also exposed the glaring defects of the Company's administration. It was agreed everywhere, but in the Leadenhall Street (office of the Court of Directors), that the government of India be transferred from the Company to the Crown. The British Parliament and Government, thereupon, resolved to take a larger, more direct and more responsible share in the conduct of the Indian administration. By a Royal Proclamation of 1st November, 1858, the East India Company was liquidated and the Government of India was placed under the direct authority of the British Crown. The Parliamentary measure, which embodied these changes and others related to the transfer of India, is known as the 'Act for the better Government of India.'

I—CAUSES RESPONSIBLE FOR THE TRANSFER OF POWER or (CIRCUMSTANCES FAVOURING THE ENACTMENT OF THE ACT)

Company's Rule—anomalous and anachronistic

As a result of the Company's political activities, an 'anomalous' situation had grown up in India. The Company professed to be nothing more than a great trading concern, but it was, to all intents and purposes, a full-fledged government. The people and Parliament of England were dissatisfied with the situation. They often pointed out that it was an 'anachronism' to leave a private corporation in possession of so vast a dominion as India. The Queen also regarded the Company as an undesirable anomaly. She had strongly disapproved the grant of medals by its authorities for military services in India. From the constitutional point of view, also, the Company's rule was open to objection. It did not fulfil the basic condition of English political system: the administrative functions must be accompanied by the ministerial responsibility.

Dissatisfaction with the Double Government

The dual government established by the Pitt's India Act of 1784 had made the situation almost irksome. The authorities were unfavourably impressed with the inefficiency, inconvenience and frequent conflicts (between the Board and Court), which had been noticed during its practical working. After the general elections of 1857, even Lord Palmerston (the then British Prime Minister) had represented to the Queen the inconveniences caused by the complex nature of the system. He had also communicated his intention of placing the government of India under the direct authority of the British Crown.

Great Revolt, 1857

When the circumstances were thus tending towards a change, the Great Revolt of 1857 provided an occasion for the Parliament to give a *Coupe de grace* to the Company's government. The news from Delhi shook the people, Parliament and Government alike. The opposition to the Company's rule became more pronounced, and the Parliament also expressed its willingness to take over full responsibility of governing the Indian possessions. The Whig Prime Minister announced his decision to introduce a bill for the abolition of the Company's rule in India.

Transfer of Power was inevitable

Drs. A.C. Banerjee and R.C. Majumdar are of the opinion that the transfer of power from the Company to the Crown was inevitable. Even if there had been no Mutiny of 1857, the extinction of the Company's rule over India was almost certain. Things had been rapidly moving in this direction for the last about seventy years. The Charter Act of 1813 had clearly asserted the sovereignty of British Crown over the Company's Indian possessions. The subsequent Act of 1833 had not only granted the territories and revenues of India to the Company in trust for His Majesty, but had also made provision for the repayment of the Company's capital in the next forty years. It was a clear indication to the fact that Company's rule over India could not last for more than four decades. To put in other words, the Company's rule in India would have been normally terminated in 1873 even if the Great Revolt had not abruptly ended it fifteen years earlier.

Grand Petition of the Company

The decision of the Whig ministry to transfer the Company's Indian possessions to the Crown caused a great alarm in the higher circles of the Company. Its Chairman (Ross Mangles) and the Deputy Chairman expressed surprise at its threatened extinction and held that "an intermediate, non-political and perfectly independent body like the Company was an indispensable necessity for good government in India". They also submitted a formal petition to the Parliament against the proposed Bill of the Whig ministry. This document was drafted ably and skilfully by John Sturat Mill (the renowned genius of the time), who was then in the service of the East India Company. The Company in this petition emphasised the need of *status quo* for some time. It demanded a thorough and fair investigation into the Mutiny and its causes to ascertain impartially the Company's responsibility for the great rising. The Company also dilated upon its services to the mother country and held that it was no mean a service of it to have acquired for her, without the smallest cost, the 'magnificent empire in the East'. The Company's authorities unhesitatingly pointed out that if the administration of India had been a failure, the fault lay not with the East India Company, but with the British Government. For, the Pitt's India Act had made the Board of Control the real ruling authority, converting

the Company into a *quasi-state* department. To strengthen their case still further, the Company warned the Government of England of the dangers involved in the new arrangements.

Answer to the Grand Petition

The Company's petition failed to produce any effect upon the Government of Lord Palmerston. While introducing the Bill in the House of Commons, the Prime Minister gave an elaborate reply to all the objections. He argued that the Bill was no condemnation of the Company and its services. On the other hand, it was a measure to remove the glaring defects inseparable from the existing arrangements. Justifying the transfer of India to the Crown, he pleaded that it was not desirable on the part of the British nation to keep a chartered Company in-charge of India and its government, when it firmly believed that all administrative functions should be accompanied by ministerial responsibility. As regards the question of dangers involved in the new arrangements, Lord Palmerston argued that the Company was labouring under misconception. The Government would not face any difficulty or danger. The change would rather inspire the loyalty and respect of the Indian people for the British Government. Sir George Cornewall Lewis, a member of the House of Commons, levelled a ruthless criticism against the Company's administration. He challenged the Company to find out a single bright page in their annals during the whole period of their administration and refused to give them any credit for the tolerable administration after 1784. In the course of his speech, he also observed that no civilized government ever existed on the face of this earth, which was more corrupt, more perfidious and more rapacious than the Government of the East India Company from the year 1765 to 1784.

In short, the need for transfer of Government of India to the Crown was justified by the party in power and a Bill to that effect was introduced in the British Parliament. But, fortunately for the Company, Palmerston's ministry was soon turned out of office. After that, Lord Derby formed his Conservative Government and Benjamin Disraeli, the Chancellor of Exchequer, introduced a new India Bill. It was 'complicated, unworkable and grotesque' and provoked the well known comment of Lord Palmerston : "Whenever he saw a man laughing in the streets, he was sure that man had been discussing Mr. Disraeli's Bill."

Disraeli's Bill also failed for lack of support in the Parliament. At last Mr. Stanley introduced a new Bill which, after many vicissitudes, was enacted and became the "Act for the better Government of India, 1858".

II—MAIN PROVISIONS OF THE ACT or (CHANGES INTRODUCED BY THE ACT)

The Act declared that thenceforward India would be governed by and in the name of Her Majesty, the Queen. It also invested in Her Majesty all the territories and powers of the Company. The Act had 75 sections in all. It introduced the following important changes :—

I—Changes in the Home Government

1. The government and revenues of the Indian territories together with paramountcy rights over and the tributes from the Indian States were vested in the Crown.

2. The Board of Control and the Court of Directors were abolished and their functions and powers were transferred to a Secretary of State for India. He was to be a minister of cabinet rank, and a member of one or the other house of the Parliament.

3. The Secretary of State was to be assisted by a council of fifteen members, eight of whom were to be appointed by the Crown and the remaining seven were to be elected by the Court of Directors from among themselves. The majority of the Councillors (at least 9) were required to be men with Indian experience.*

4. The members of the Council were to hold office during their good behaviour, but they could be removed by the Crown on an address of both houses of Parliament. Vacancies in the Crown appointments were to be filled by the Crown, while those among the seven other members were to be filled by co-option.

5. The Council was to conduct its business under the direction of the Secretary of State, who was to act as its President. He could over-rule the decisions of the majority, save and except the matters relating to expenditure and loans.

6. The Council was to meet at least once a week. Its quorum was fixed at 5. The decisions taken by the India Council

*They must have served or resided in India for at least ten years.

in the absence of the Secretary of State could be valid only with the written approval of the latter.

7. The salaries of the Secretary of State and his Councillors, the cost of India office, the debts of the East India Company and dividends on its stock, were all to be charged on Indian revenues.

8. The Secretary of State was required to lay annually before the Parliament a financial statement of expenditures and revenues of India. He was also to report on the moral and material progress of the country.

9. Appointments to the Covenanted Civil Service were to be made by open competition under rules to be framed by the Secretary of State-in-Council with the advice of the Civil Service Commission.

II—Changes in Indian Administration

1. The Act did not introduce any formal changes in the constitution and the general frame-work of the Government of India. It simply gave the additional title of 'Viceroy' to the Governor-General of India. The new title tended to enhance the dignity and prestige of the Governor-General as personal representative of the Crown.

2. The Governor-General and the Law Member of his Council, the Governors and the Advocate-General were to be thenceforward appointed by the Crown.

3. The military and naval forces of the Company were transferred to the Crown, subject to the same conditions of service under which they had been enlisted.

4. All treaties made by the Company were to be binding on the Crown. All contracts, liabilities and engagements etc. entered into by the Company could be enforced by or against the Secretary of State in Council.

5. The assumption of the Government of India by the Crown was to be declared to the princes and people of India by the Queen's Proclamation.

✓ QUEEN'S PROCLAMATION, NOVEMBER 1, 1858

'The Act for the better Government of India' was passed in August, 1858. But the assumption of the Government of India by

the Crown was declared on November 1, 1858 by the Queen's Proclamation. The Proclamation was drafted according to the wishes of the Queen and embodied some high-sounding pledges. It was read out by Lord Canning to the assembled princes and people at a Darbar held at Allahabad. It was also publicly read in all the district towns in India. The Proclamation declared :

(a) "We have resolved to take upon ourselves the Government of the territories in India hitherto administered in trust for us by the Honourable East India Company."

(b) "We hereby call upon all our subjects within the said territories to be faithful and to bear true allegiance to us, our heirs and successors."

(c) "We appoint Viscount Canning to be our First Viceroy and Governor-General in and over our said territories."

(d) "We confirm all the civil and military officers employed by the East India Company."

(e) "We gladly accept all treaties and engagements, which the native princes of India have made with the East India Company and we will scrupulously maintain them."

(f) "We desire no extension of our present territorial possessions, and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others." Thus, the policy of annexation and expansion was denounced in unequivocal terms.

(g) "We shall respect the rights, dignity and honour of native princes as our own."

(h) "We disclaim alike the right and the desire to impose our religious convictions on any of our subjects. We will not interfere with the religious belief or worship of any of our subjects."

(i) All shall alike enjoy the equal and impartial protection of the Law.

(j) "So far as may be, our subjects of whatever race or creed, be freely and impartially admitted to offices in our services."

(k) "In framing and administering the law, due regard will be paid to the ancient rights, usages and customs of India."

(l) The Queen expressed her regret over the acts of Mutiny and she pardoned the offence of those who had taken part in the

rising. She gave her approval of the policy which was being followed by Canning. Clemency was granted to all offenders except those who were convicted of having directly taken part in the murder of British subjects.

(m) In the end, the Queen declared that it was her earnest desire "to stimulate peaceful industry, to promote works of public utility and improvement, and to administer the Government for the benefit of all our subjects residing therein."

1 Importance of the Proclamation

The Queen's Proclamation of 1858 is a landmark in the history of India. It held forth many a significant assurance to the chiefs and people of our country. In the words of Dr. Ishwari Prasad : "The Proclamation brought a new heaven on earth. It promised the Indians peace and prosperity, protection of their religion, equality of treatment with other subjects of the Queen, and above all a share in the higher services of India.*

The Indians were, no doubt, greatly inspired by the pledges contained in this historic declaration. They looked upon it as the charter of Indian rights and liberties. While struggling for the constitutional reforms and concessions, the Congress invariably referred to the principles laid down in the Proclamation. The Moderates usually referred to this document in order to find support for their demand for wider political rights. Referring to the Proclamation in his 1886-Congress presidential address, Dadabhai Naoroji said : 'In it are embodied the germs of all that we aim at now, of all that we can desire thereafter.' He solemnly declared that every child, as soon as it licks its mother tongue, must be made to memorise the Proclamation. Sir Suran-drath Banerjee in the 1897 Congress observed : "The Proclamation is our Magna Carta, our watch-word, our battle-cry, the gospel of our political deliverance." But, to the Indians' dismay, it was systematically disregarded in more than one respect. Even Queen Victoria, who had got the Proclamation drafted according to her wishes, did not evince a broader outlook towards India's constitutional progress.**

The Proclamation was, however, fully made use of by the authorities in India. It helped them in pacifying the agitated

*Dr. Ishwari Prasad : *History of Modern India* P. 282.

**It is evident from the fact that even after thirty years of intellectual progress in India she was not in favour of the Government of India's proposals for introducing elective principle in the constitution of the Councils.

Indians and thus restoring law and order. Lord Canning was shrewd enough to take full advantage of the feeling of relief evoked by the Proclamation and to impress upon the Indians that a new era had in reality begun. Besides, the new administrative policy envisaged by the Proclamation remained the basis of British rule for the next about sixty years.

✓ SIGNIFICANCE OF THE ACT

The transfer of the Government of India to the Crown, as effected by the Act of 1858, was an event of great constitutional importance. According to G.N. Singh, the passing of the *Act of 1858 closed one great period of Indian history and ushered in another great era—the direct rule of the Crown*.^{*} The trading corporation, which had been constituted about two hundred and fifty years ago for the purpose of extending British commerce to the East, came to an end. “It transferred to the Crown on relinquishing its functions”, writes Marshman, “an Empire more magnificent than that of Rome”. This transfer was announced by the Royal Proclamation, which was couched in a dignified language and breathed a spirit of magnanimity, clemency, friendliness and justice. The extinction of the East India Company gave place to India Office, Foreign Office and Colonial Office in the Whitehall.

The Act is also significant for *giving a death blow to the Dual Government, notorious for its cumbrous, complex and dialatory character*. Enlightened public opinion in England had often expressed dissatisfaction with the dual organisation. But the reaction against the system became more pronounced after the Indian Mutiny. It was generally admitted, writes Dodwell, that the division of the functions between two authorities was injurious and inexpedient. Demand for the abolition of the Dual Government became vehement also in the higher circles. Hence, the ‘Act for the better Government of India’ gave a *coupe de grace* to the old system and thereby cleansed the ‘Augean Stable’.

With the transfer of Indian territories to the British Crown, *a greater and closer control came to be exercised by the Home Government over the Indian affairs*. The reason for this stricter control after 1858 was, however, obvious. With the abolition of the Double Government in London, the Governor-General was

^{*}Singh G.N. : *Landmarks in Indian Constitutional and National Development*. P. 71.

left with no choice but to obey the orders of the Secretary of State in every particular.

It has been emphatically pointed out by some critics that with the acceptance of responsibility by the Parliament, that body's interest in Indian debates decreased. It became a 'sleepy guardian of Indian interests'. Its indifference towards Indian affairs for long during the Post-Mutiny period was noticed even by the British statesmen. Mr. Ramsay MacDonald once observed : "Parliament has not been a just or watchful steward. It holds no great debates on Indian questions...its seats are empty when it has its annual saunter through the Indian budget'. According to A.B. Keith, the Parliament was anxious to take interest in the Indian affairs, but the domestic difficulties and the growing complications in the Indian Government made it difficult for the Parliament to pay adequate attention to the Indian affairs. This defence of Mr. Keith is hardly convincing, for, the Parliament often evinced unusual interest in those Indian affairs which, in any way, touched the interests of Britain.

✓ *The creation of the office of the Secretary of State was in itself an important factor in the new development.* The post of the President of the Board of Control had never been occupied by men of talent and ability except Dundas. It was generally regarded a damping ground for the mediocrities. But the office of the Secretary of State was held by men like the Duke of Argyll, Lord Salisbury, Lord Randolph Churchill, Lord Morley—some eminent by character, some by talents and some by both. The holders of this post were persons of greater weight in the Cabinet and of greater political consequence in Parliament than the former presidents. Consequently, the new Secretaryship began to be looked upon as an office of dignity and influence. Besides, the Secretary of State had sufficiently large powers with regard to Indian administration. Nothing could be done or undone without his consent. This, too, gave him a strong position, which he maintained uptill 1919, when he voluntarily relinquished some of his powers. It would not be out of place to mention here that the office of the Secretary of State continued for about 90 years and it played an important part in the Indian administration. It was only in 1947, (when the British quitted India), that his post was abolished once for all.

✓ *The creation of the India Council in 1858 was also a change of no*

ordinary importance. The Court of Directors consisted of men, who had never been to India. They exhibited colossal ignorance regarding the Indian affairs. Besides, their interest in the Indian affairs was deplorable and their control over them was general in character. But it was otherwise with the members of the newly constituted India Council. These members, having spent the major part of their lives in India, knew much about her conditions and administration. It was, therefore, quite natural for them to have genuine interest in the Indian affairs. From the Indian point of view this was a change for the better.

According to Alfred Lyall, the *India Council served to prevent mischief but failed to do much positive good.* It was bureaucratic in nature and its control was restrictive rather than suggestive. Perhaps, this was due to the fact that the Civil Servants who had left India had been given the privilege of directing fresh policy from Whitehall. The India Council, however, continued to function till 1935, when it gave place to Advisers to the Secretary of State.

As provided by the Act, *the Indian revenues were to stand the expenses of the Secretary of State and his Council.* It was, indeed, too heavy a burden on the slender resources of poor India. Worse still, this financial drain continued to exhaust her treasury till 1919 A. D. The system was, no doubt, justified on the ground of strict business accountancy but, in view of the long-standing relations between India and England, this was nothing 'but a business accountancy with a vengeance'.

The Act also *brought a significant change in the mutual relationship of the native princes and the new Government.* By the Queen's Proclamation, the princes were assured of their rights, dignity, privileges and honour. The policy of annexation was definitely abandoned and the perpetuity of their states was also guaranteed. Besides, the feudatory chiefs were granted high-sounding titles, gun-salutes and other marks of favour. This change in the British policy towards the Indian states established a new bond between the Crown and the Indian princes.

The Act also *evoked the interest and enthusiasm of the people in India.* The freedom of religion, equal protection of law, admission to the offices on the basis of merit etc. etc., all that was promised by the Queen's Proclamation, inspired new hopes in the hearts of the Indians. According to Coupland, more significant than the

change itself was the sense that it closed a chapter of Anglo-Indian history and opened a new one'.

(b) *Was the assumption of the Government of India by the Crown ■ substantial change ?*

It is generally observed that the transfer of Government of India from the Company to the Crown was a very substantial and significant change. As a result of it, the Indian administration came under the direct control of the British Government ; the Governor-General became the personal representative (viceroy) of the Crown and thus gained in prestige ; and the notorious dual system was abolished once for all. But Sir H. C. Cunningham does not agree with this view. He is of the opinion that the change in question was more nominal than real. As early as 1784, the Pitt's India Act had placed the Government of India under the control of the British cabinet through the President of the Board of Control. The subsequent increase in the powers of the Board had reduced the Company to a 'quasi-state department' and the Court of Directors to an advisory council. Although the Court of Directors had been in a position to exercise certain powers of 'obstruction and delay,' yet with the single exception of the power of recalling the Governor-General, held Lord Derby, there was no single act which the Directors performed without the assent of the Board of Control. Thus, the Board of Control had been a real power since 1784, while the Court of Directors was only a deliberative body.

The mutual relations of the Court and the Board further reveal that after the enactment of Pitt's measure, there started a gradual decline in the position of the Court of Directors. Every successive Act of the Parliament dealt a fresh blow to its already dwindling powers till the Charter Act of 1853 reduced it to an almost impotent organisation. It deprived the Court even of its power of patronage—the choicest flower of its bunch. The number of the Directors was also reduced from twenty-four to eighteen, and six of them were to be the nominees of the Crown. Provisions were made, in addition, to secure the majority of the royal nominees in ■ thinly attended meeting of the Court. In short, the Charter Act of 1853 prepared a way for the final extinction of the Court of Directors or, more appropriately, made the transfer of India to the Crown only a question of time. This process of gradual extinction was at last completed by the Act of 1858. So, according to Sir

H. C. Cunningham, the change of 1858 was not something substantial or sudden. It was, on the other hand, nominal and a natural outcome of the process, which had been in operation since 1784. To quote Dr. Ishwari Prasad, "The Act of 1858 was the culmination of the process begun by Pitt in 1784 and merely dressed the seat of power and responsibility with the outward semblance of authority".

SECTION II

HOME GOVERNMENT (1858—1919)

Parliamentary Control over Indian administration

The transfer of the Government of India to the Crown tended to establish parliamentary control over Indian administration. As provided by the Act of 1858, the Parliament was to exercise its authority through the Secretary of State for India who, as a member of the British Cabinet, was responsible to it. When any matter of Indian administration attracted public interest, the Parliament had the ordinary and effective means of making its opinion felt by questions, by amendments to the address, by motions to adjourn, by resolutions or by motions of no-confidence. But as revealed in the subsequent years, parliamentary control in practice was very slight. Partly because of their ignorance of the Indian affairs and partly because of their pre-occupation with the affairs of their own country, its members displayed but little interest in the Indian administration.* They never cared to read the Secretary of State's report on moral and material progress of India and a perfunctory debate took place every year in the Committee on East India Revenue Accounts. The discussions in the Parliament were generally confined to a few topics such as opium trade, political agitation, cotton duties, etc. It was, indeed, a strange paradox. For, in the days of the Company, the Parliament held a regular inquest into the Indian administration before renewing the Charter, but after 1858 this practice lapsed. To worsen the situation, if ever the House of Commons passed a resolution in favour of the Indians, the Secretary of State did not care to give effect to it.

*Ramsay Macdonald once remarked in this context : "Parliament has not been a just or watchful steward. It holds no great debates on Indian questions ; it looks after its own responsibilities with far less care than it looked after those of the Company ; its seats are empty when it has its annual saunter through the Indian Budget."

Perhaps, he felt that the interest of the House was not well sustained. This incompetence of the Parliament to deal with the Indian affairs was pointed out by the authors of the Montford Report in these words : "Of all the departments of the State, the India Office is at present the least concerned with the Parliament. Parliamentary control cannot, in fact, be called a reality. Discussion is often out of date and ill-informed ; it tends to be confined to a knot of members and to stereotyped topics and it is rarely followed by any decision." This indifference of the Parliament made the Secretary of State an overwhelming authority having a complete control over the entire range of the Indian administration.

The India Council of the Secretary of State

By the Act of 1858, the Board of Control and the Court of Directors were abolished. All their powers were assumed by a minister of the British cabinet known as the Secretary of State for India. India Council consisting of permanent officials was created to assist the Secretary of State in his work. It was hoped that the members of this Council would not sacrifice their convictions to the exigencies of party politics and would exercise 'moral control' over the President. But it soon became clear that an official body like India Council was too weak an instrument to influence the activities of the Cabinet minister. The subsequent legislation rather reduced the Council to a subordinate position.

The members of the India Council, as a matter of fact, had been handicaped from the very beginning. They had no power of initiative. Moreover, the Secretary of State was authorised to act by himself, entirely independent of his Councilors in secret affairs. He could simply mark a despatch as urgent or secret and send it to India without the knowledge of his colleagues. No restriction was laid on what he could do through such a despatch. The secret affairs might include the levying of taxes and waging war and other measures involving larger expenditure from Indian revenues. In such cases, the members of the India Council could not discharge their statutory responsibilities. To their still more disadvantage, the Secretary of State could claim to speak on behalf of the British people, while none of them could boast of this backing.

✱ The Government of India Act, 1869 was the first in the series of the parliamentary measures, which gradually weakened the

position of the Council in relation to the Secretary of State for India. It reduced the life tenure of its members to a period of ten years and authorised the Secretary of State to fill all vacancies in the Council—vacancies which were hitherto filled on the principle of election by the Council. Another provision of this Act deprived the Council of its right of making appointments of the members of Governor-General's and Governors' Councils. In 1876 (The Council of India Act) the Secretary of State was empowered to appoint three life members, who need not have any experience of the Indian administration or public life. The Council of India Reduction Act, 1889 allowed the number of the members to be reduced from 15 to 10.

Another blow to the powers of the Council was, however, dealt in 1907. The Act of that year reduced the tenure of its members from 10 to 7 years and salary from £1,200 to £1,000 a year. Besides, no one could be appointed as member of the Council, whose Indian experience had terminated five years before the time of his appointment. The vesting of the Secretary of State with the power of re-appointing the retiring members for a further period of five years sank the Council to a still lower position. The Councillors desirous of extension after retirement could hardly afford to take step (during their term of office) any way distasteful to the Secretary of State. Thus, the reduced tenure, the right of the Secretary of State to re-appoint members and the flexibility in the number gave the Secretary of State great authority in India Council.

In the routine work of the Council also its members had some disadvantages which further weakened their position in relation to the Secretary of State. They did not possess any patronage. They had monopoly of expert information. They could not go to the law against the Secretary of State, nor could they take independent action of their own. Furthermore, all the despatches from India were addressed to the Secretary of State. He passed them on to the members after having formulated his views on them with the help of his assistants in India Office. All orders from England were communicated to the Government of India on his behalf. With the opening of the telegraphic communications his position became stronger than before. He could now directly exchange his views with the Governor-General in India.

The division of the Council into six committees (committees for

judicial, financial, military, revenue, political and public works) further undermined the position of its members. The procedure of preparing a draft in these committees was so designed as to leave little scope for the members to effect any change in the draft duly approved by the Secretary of State for India. Besides, the Secretaries of the various departments soon came to be recruited from the class to which the members themselves belonged. Very often, the former outdistanced the latter in point of their ability and experience of Indian administration. The Secretary of State, therefore, attached more value to the opinion of the Secretaries than to that of the members of India Council.

According to A. C. Banerjee, the relations of the Secretary of State with the India Council were, to a large extent, coloured by personal factors. Sir Charles Wood (Secretary of State from 1859 to 1866) declared that any Secretary of State who firmly and honestly discharged his duties would never experience the slightest difficulty with his Council. He was averse to any measure diminishing the independence and self-respect of the Council. He believed that a strong Council was needed to "give the Secretary of State the support requisite for resisting party pressure, a pressure not always applied in a manner beneficial to India." Lord Salisbury, who became the Secretary of State in 1866, was in favour of reducing the power of the Council of India. He declared in the House of Lords in 1869 that the Council under the cover of vetoing money questions interfered in all matters and became 'an incubus on the Minister. His successor in office, the Duke of Argyll, replied that the Secretary of State was 'absolutely supreme' in Council and could overrule it whenever he thought fit to do so.

During his second term in India Office (1874-77) Lord Salisbury did not care for the strong opposition of his Council and succeeded in enforcing his Afghan and North-West Frontier policy. Lord George Hamilton later on recognised the value of the Council and described it as a cabinet with absolute control over Indian administration. Lord Randolph Churchill described the Council as 'an invaluable instrument'. No Secretary of State ever consulted his Council less than Lord Morley. In 1914, Lord Crew made an unsuccessful attempt at amplifying the list of 'secret matters'—matters with which (under the Act of 1858) the Secretary of State was entitled to deal exclusively. The debates

on the report of Mesoptamia Commission revealed that even vital decisions on war had been taken by the Secretary of State without consulting his Council.

SECTION III

THE HOME GOVERNMENT AND THE GOVERNMENT OF INDIA

or

(THE SECRETARY OF STATE AND THE GOVERNOR- GENERAL-IN-COUNCIL)

(1858—1919)

Before 1858 the Government of India had a good deal of independence in its administration. The Governor-Generals often disposed of affairs at their own initiative and in a majority of cases succeeded in imposing their will upon the authorities at Home. This large and undefined discretion enjoyed by the Indian Government had no constitutional backing. It was their unsolicited advantage resultant from the necessity of the situation. The long distance between India and England and slow means of communication, the duality in the Home Government and its cumbrous method of procedure, rendered it impossible for the Government of India to obtain instructions from London in time. Sometimes, it took two years for an Indian despatch to be answered. Since affairs in our country could not brook this inordinate delay, the Governor-General was obliged to act on his own responsibility, leaving the Home authorities with little choice but to approve what had been done. Prior decisions taken by the Governor-General of India were, therefore, generally left unaltered and this, in consequence, rendered the control of the Home Government on the Indian administration ineffective and *ex post facto* in nature. However, in order to forestall the repetition of the Governor-General's wilful acts, broad outlines of policy were, at times, sketched and supplied by the Home Government. In case of their flagrant violation, the Governor-General was even recalled. But that was done very rarely.

After the transfer of the Indian territories to the Crown, the relative position of the Home Government and the Government of India underwent a change. The control of the former over the Indian administration gradually increased and there were some cogent reasons for that. In the first place, with the

extinction of the Company in 1858, the Board of Control and the Court of Directors also disappeared. Their powers and functions were assumed by the Secretary of State. This change, in consequence, weakened the position of the Indian Government in relation to the authorities at Home. Under the new conditions, the Governor-General had no President of the Board to hold out promise of help in case his policy was attacked by the Directors, nor were there Directors to encourage him in a line of conduct, which the President was known to dislike. On the contrary, there was one authority in the person of the Secretary of State, whose rule was likely to be more vigorous than that of the old dual Government. Evidently, the disappearance of the duality in Home Government deprived the Indian Government of its former advantage and subjected it to a comparatively strict control of the authorities in London. The independence of the Governor-General was considerably curtailed.

The creation of the post of the Secretary of State for India also made for an increased degree of the influence exercised from London over India. The holder of the new office was to be a parliamentary minister—a person of greater weight in the Cabinet than the former President. Besides, except Dundas, the average occupant of Cannon Row had been a mediocrity ; but the average occupant of the India Office had been something more. For instance, the Duke of Argyll, Lord Salisbury, Lord Hartington, Lord Randolph Churchill and Lord Morley, who acted as Secretaries of State at one time or the other, were men of real eminence. Some of them were known for their high character, some for extra-ordinary talents and some others for both. Their personal qualities of head and heart also gave them advantage necessary to maintain their effective control over the Government of India. Apart from that, before the Mutiny of 1857 the Governor-General was often a bigger man than the President, but that was not the case in the post-Mutiny period.

The India Council constituted to assist the Secretary of State in his work, too, in a way, strengthened the hands of the Home Government. Unlike the Directors, who had never been to India, its members had spent the major part of their lives in India. They were conversant with the Indian affairs and had developed a sort of affection for our country. Not unnaturally, they considered themselves well qualified for the job and displayed greater interest in the Indian affairs than the former Court of Directors. Hence,

a Secretary of State, strong in their support, observed H.H. Dodwell, would evidently be a formidable opponent even to so distant a government as of India.

In the second half of the 19th century some more powerful forces worked in favour of the Home Government. By 1870, a direct telegraph line between India and England by submarine cable through the Red Sea was completed. The weekly service of steamship between the two countries through Suez Canal also came into existence. As a result of it, the statutory power of controlling Indian policy (both in principle and detail), which the Home Government had always enjoyed in theory, became effective. The Secretary of State's interference in the Indian affairs gradually increased. It was first felt in financial matters but it soon spread to all branches of government. The India Office kept the Calcutta Government under close control. The Governor-General, in turn, closely watched the Provincial Governments and the latter were compelled to scrutinize carefully the work of the district officers. Indian administration, thus, passed into the hands of the Grand Mughal of the Whitehall. The Government of India could now no longer confront him with an accomplished fact. Moreover, the large investments of British capital in India and the growth of Indian business in England also made it desirable for the Secretary of State to be vigorous in the discharge of his duties.

The increase in the control of Indian administration from London soon made itself felt in the relations of the Secretary of State with the Governor-General of India. Controversies and conflicts arose between the two authorities. In 1870, Lord Mayo's Government was ordered by the Secretary of State to pass into law, without least modification, the two draft Acts sent from London. The Indian Government protested against this order and held that the Indian Legislative Council could not be a mere instrument to be used by the Secretary of State for legislative purposes. Argyll, the Secretary of State, brushed aside its objections. He emphasised the superiority of Home Government over the Indian authorities in the final control and direction of the Indian affairs and pointed out that it was latter's duty to comply with the orders from above without making any distinction between legal and executive matters.

During the viceroyalty of Lord Northbrook the conflict between the two authorities took a serious turn. The Home

Government, in view of the economic theories prevalent at that time, impressed upon the Governor-General to be excessively liberal in the application of the Free-Trade policy in India. But Northbrook, though a confirmed Free Trader, sturdily refused to do so. He offered sound arguments in support of his stand and also protested against the attempt of the Home Government to weaken the authority and hamper the action of the Government of India. The controversy ended in the resignation of the Governor-General, and the financial policy of the Government was kept tied to the doctrine of Free Trade.

The Governor-General-Lord Elgin also had differences with Sir Henry Fowler, though he was exceedingly sub-servient to the authorities in London. It is said that between 1894-98, he used to telegraph London twice a day. The climax of such conflicts was, however, witnessed in the time of Morley and Minto. The Secretary of State in his old age developed an autocratic temperament, regarded the Governor-General as his agent and corresponded directly with the officials in India. Not only that, Morley appointed an Indian to the Governor-General's Council even without observing the formality of consulting Minto. In short, under Morley no matter was too small for the Secretary of State's interference, and he made an excessive use of telegrams and letters for conducting the Indian affairs. Lord Minto complained against this intolerable interference of the Secretary of State. He wrote : "I used to imagine that the Secretary of State aimed only at directing great principles of Indian policy, and that the administration of the country rested with the Government of India, but there has been interference in everything. It only results in intense worry to the Viceroy, for, do what he will, the Secretary of State cannot administer India.*

The limitations which gradually came to be imposed on the expenditure of the Indian Government further strengthened the hands of the Secretary of State. The latter's sanction was made obligatory on the Indian authorities for reducing or increasing the taxes. Departure in currency policy, raising of loans, expenditure on the construction of all but the minor branch railways, creation of any appointment carrying a salary of Rs. 500/- a month, political pension of Rs. 1,000/- a year etc. were subjected to Secretary of State's sanction. These limitations

* *Sir Malcol Seton, India Office* P. 81.

on the expenditure automatically controlled the Indian administrative policy from London.

The impact of the Home Government was felt most strongly in foreign policy. Hitherto, the Governor-General, as the man on the spot, had been obliged in self-defence to take his own course. But from 1870 (when the Red Sea cable was completed) onwards Indian and British foreign policy became one, and the Governor-General in this matter found himself reduced at times to the position of an ambassador.

The facts narrated above should not lead to the inference that the Governor-General was a mere non-entity. The practical difficulties of governing India from a distance of 6,000 miles left the Home Government with no alternative but to allow a considerable discretion to the Governor-General. The more so, when forces of nationalism were at work and called for a careful watch by the authorities in India.

SECTION IV

THE GOVERNMENT OF INDIA

(1858—1919)

The Act of 1858 did not effect any change in the Government of India. The superintendence, direction and control of the civil and military administration remained vested in the Governor-General-in-Council. However, the Governor-General now became the direct representative of the Crown, and his new designation—'Viceroy'—enhanced his prestige if not his statutory authority. Significant changes in the sphere of the Governor-General's own authority and in the constitution of his Executive Council followed in the post-Mutiny period.

(a) Introduction of Portfolio System

Lord Canning, who became the first Viceroy under the Crown, was not satisfied with the system of collective business. He soon introduced the portfolio system, which was legalised by Section 8 of the Act of 1861. Under this system the Executive Council was left to deal with general issues or questions of special difficulty, while the individual members were empowered to deal with comparatively minor departmental matters. Hence, the member incharge of a department disposed of routine and unimportant cases on his own authority and reported the action he had taken to the Governor-General in his weekly statement. Besides, the

member and the secretary of the department saw the Governor-General every week and discussed the progress of business in their department. In case of any difference of opinion or any other technical difficulty pertaining to an issue, the matter was placed before the full Council and decided by a majority of vote'. The Governor-General could, however, overrule the decision of the majority in his Council. Thus, we find that 'in place of a collegiate government presided over by the Governor-General, who initiated all business and issued orders directly to the secretaries of all departments, business came to be carried on in separate departments. The members became experts entrusted primarily with the running of their own departments.* This decentralisation of the business of the Government made for efficiency and despatch. It was also a move in the direction of the cabinet government.

The distribution of portfolios among the members of the Council was regulated by custom, not by law. The Governor-General generally had the foreign and political departments under his direct control. The departments of finance, legislation, army, home and revenue and agriculture were held by other members of the Council. Be it noted that the members in charge of the various departments were administrators rather than councillors.

(b) Changes in the Composition of the Council

By the Indian Councils Act of 1861 the Governor-General's Council was enlarged. A fifth member was added to it to render the expert financial advice. Of these five members, two were civil servants, one was a soldier (known as military member), one was a financial expert and one was a lawyer. The Commander-in-Chief might be, and in practice always was, an extra-ordinary member.

The Indian Councils Act of 1874 provided for the appointment of a sixth member to the Executive Council to take charge of the department of public works. In 1904, he was converted into a member in charge of the commerce and industry. The famous Curzon-Kitchner controversy led to an important change in the composition of the Executive Council. The Commander-in-Chief became the Governor-General's sole adviser on military matters; the military member was replaced by a military supply member of

*Sharma Sri Ram—*A Constitutional History of India*. P. 96.

limited authority and inferior status. Lord Morley held that this arrangement 'proved good neither for administration nor for economy.' In 1909, the post of the military supply member was abolished. Next year, the vacancy was filled up by the appointment of a member in charge of education and health. During the First Great War, the Executive Council consisted of five ordinary members (Home Member, Finance Member, Law Member, Commerce and Industry Member, Education Member) and one extra-ordinary member *viz.* the Commander-in-Chief.

Till 1909 the Viceroy's Executive Council was wholly European in composition. By the Indian Council Act of 1909, Mr. S.P. Sinha was appointed as Law Member to this Council. This was the first step in the Indianisation of the Executive for which the Congress had put forward its demand as early as 1898. While commenting on this appointment, both Lord Minto and Lord Morley insisted that it was not a political concession, it was merely the recognition of merit, the fulfilment of the pledge given in 1833 and again in 1858. The Secretary of State, therefore, refused to accept the demand of the Muslim deputation that, if there was a Hindu on the Executive Council, there should be a Muslim as well. In practice, however, the communal principle was accepted. Lord Sinha was succeeded by a Muslim lawyer, and on the completion of his term of office a Hindu was appointed as Education Member.

(c) *The Governor-General and his Council*

As regards the relations between the Governor-General and his Council, little friction was witnessed between the two authorities. The supremacy of the Governor-General was well established "both by statute and by tradition." Most of the Councillors were experienced bureaucrats, loyal, cautious and conservative by nature. Sir John Lawrence, however, resented the control of his Council, "This attitude of the Governor-General towards the Council", observes A.B. Keith, "was due to the fact that he had come to office from freedom in the Punjab, and was a tired man."* In practice, however, his position in relation to the Council was considerably strong. To quote Sir Bartle Frere, "...no Governor-General since the time of Clive has had such powers and opportunities." Lord Northbrooke co-operated with the Council and defended its rights against the Secretary of State, Lord Salisbury. Lord Ripon, "wrote his biographer Wolf," recognised the value of the

*Keith :—*A Constitutional History of India* P. 171-172.

Council*. Lord Curzon, to his good luck, found valuable allies in the Councillors, although his differences with Lord Kitchner led to his own resignation. Lord Minto emphasised the necessity of consulting the Council on foreign affairs, but he complained that the Councillors sent by Home Government were 'useless and mischievous'.

It is, however, interesting to note that on several occasions, in the 19th century, the Council served as a guardian of Indian interests against the policy, which the Secretary of State and the Governor-General were forcing on India. But, in the 20th century, the attitude of its Councillors underwent a change. It became rapidly conservative, if not reactionary. But with all its efforts and tactics, it failed to tackle the situation created by the national awakening in India.

FURTHER READING

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3. *H. Dodwell* : A sketch of the History of India.
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*Wolf: *Life of Ripon*, Vol. II P. 40.

CHAPTER 7

The Indian Councils Act, 1861

✓ The Indian Councils Act of 1861 was an epoch-making statute by which the British Government made the first important change in the structure of the Government of India. With it began the dual process of Indianisation and decentralisation that gradually led to Indian self-government. ✓ Along with the other legislative measures of the same year, the Act, in addition, ✓ provided our country with a frame-work of government, which continued (with minor modifications) till the end of British rule in India. ✓

✓ CIRCUMSTANCES FAVOURING ITS ENACTMENT ✓

Before the outbreak of the Indian Mutiny, the authorities had expressed their dissatisfaction with the working of the administrative system in India. But they had not taken any concrete step to remove its defects. The unhappy events of 1857 shook them out of lethargy, for they made them realise the dangers to which the British position in India had been exposed. Hence, in the years immediately following the Mutiny, the authorities in England grew anxious to 'place their institutions in India on the soundest possible foundations.' This led to the passing of the Indian Councils Act of 1861 which marked the beginning of the representative institutions in India.

Dissatisfaction with the Indian Legislative Council

By the Charter Act of 1853 a Legislative Council had been

established in India. Contrary to the intentions of its authors, this Council soon developed into a petty Parliament and assumed functions wholly inconsistent with the existing system of government. It also adopted the formalities of a parliamentary procedure.. The examination of bills was performed by the Select Committees and the formalities of three readings were also observed. Besides, the Council even demanded the right of independent legislation and of stopping supplies. Sometimes, it actually displayed a marked degree of independence and even acted as a body of redress and grievances. These activities of the Council caused delay, impeded business and hindered efficiency of administration. The Government was put in an embarrassing situation, when the Legislative Council would ask it to supply information on a subject, which, as a matter of policy, could not be disclosed. Hence, the Legislative Council fell into disfavour with both the Governments, in India and England, which resented particularly its assertion of independence.. Sir Charles Wood, the President of the Board of Control, pointed out that he had never wished to raise up a great independent body in India. Lord Canning's Government, therefore, seriously took up the question of some important changes in its constitution and functions.

Need for Legislative Decentralisation

The Charter Act of 1833 had deprived the Presidencies of their power of legislation, and had vested it in the Governor-General-in-Council. But this arrangement had proved to be very defective. The Governor-General-in-Council had neither time nor necessary knowledge for enacting laws suited to the needs of the Presidencies. Lord Canning had pointed out to the Secretary of State the disadvantage of the system, and had also made proposals for remedying the situation. One of his Councillors, Mr. Frere had also strongly urged the need for decentralisation. Moreover, the Presidencies chafed at the loss of their legislative power. They felt that they were being overridden by the Calcutta Government. Once, differences of serious nature arose between the Supreme Government and the Government of Madras about the Income Tax Bill. These administrative problems and difficulties were also a reason with the authorities to undertake this measure.

Reaction of the Indian Mutiny

Among the various causes which led to the passing of the

Councils Act of 1861, the Indian Mutiny of 1857 was perhaps the most important. Almost immediately after this Great Revolt, Sir Syed Ahmed Khan wrote a book in Urdu entitled *Essays on the causes of the Indian Revolt*. In it, he clearly and emphatically observed that non-admission of the Indians into the Legislative Council of India was the primary cause of the rebellion, for (i) the Government had no means of knowing the reactions of the people to its measures ; (ii) the people, on the other hand, had no means of protesting against what they might feel to be a foolish measure. Besides, both the people and the Government misunderstood the views and intentions of each other. And this chasm of ignorance and misunderstanding had led to the outbreak of the Great Revolt of 1857. 'Had there been a native of Hindustan in the Legislative Council,' wrote the Muslim leader, 'the people would never have fallen into such error.'

Some Englishmen also shared the views of Sir Syed Ahmed Khan. Sir Bartle Frere, an outstanding member of the Governor General's Council, boldly observed that 'it was dangerous to legislate for millions of people with few means of knowing except by a rebellion, whether the laws made suit them or not'. He wrote to the Secretary of State for India : "Your legislative bodies will make fatal mistakes unless they have some native members to aid them".* The Mutiny, thus, opened the way for the association of Indians with the legislation for their country and this, in turn, favoured the passing of the Act of 1861.

Demand of the Indians

The Government of India Act, 1858 had introduced striking changes in the Home government. The dual check of the Board of control and the Court of Directors had been abolished. The office of the Secretary of State for India had come into existence. An India Council had also been constituted to assist the Secretary of State in his functions. But the Act did not introduce any change in the general frame-work of the Indian Government. There was also no change of any significance in the substance of British policy. This was, indeed, very disappointing to the Indians, who soon made a demand for some useful changes in the administrative system. This also urged the Government in England to enact this constitutional measure.

*From his numerous correspondence with the Secretary of State appears that Frere played a considerable part in shaping the scheme of 1861.

Racial Bitterness

Though Canning was sneered at by his country men as 'Clemency Canning,' yet he had been very ruthless in suppressing the Indian Mutiny. Writing to the Lieutenant-Governor at Agra in May 1857, he had suggested that 'no amount of severity can be too great'. Again, in his letter to the Commander-in-Chief, he had thus written, "I should rejoice to hear...that vengeance had been terrible'. Besides, the *London Times* wrote.....'Slaughter of Delhi shall be punished with unsparing severity.' As a result of this vindictive attitude of the authorities, the tribunals entrusted with the task of trying the insurgents, acted with a scandalous brutality. The years immediately following the Indian Mutiny were, therefore, marked by growing ill-feeling between the Indians and the Englishmen in India. (Sir Charles Wood considered it the most alarming symptom. While introducing the Bill in June 1861, he frankly observed : "It would be folly to shut our eyes to the increasing difficulties of our position in India, and it is an additional reason why we should make the earliest endeavour to put all our institutions on the soundest possible foundation. Obviously, the racial bitterness, which vitiated the Indian atmosphere after the suppression of the Mutiny, also paved away for the passing of this Act.

MAIN PROVISIONS OF THE ACT

or

(CHANGES INTRODUCED BY THE ACT)

The Indian Councils Act of 1861 contemplated the extension, abridgement and modification of the existing arrangements, introduced changes in the functions and constitution of the Indian Councils. The important amongst these changes were as under :

1-Changes in the Governor-General's Executive Council

(1) Under the Act of 1861, the Governor-General's Executive Council was enlarged. It was to consist of five ordinary members, and not four as before. The fifth member was to be ■ 'a gentleman of legal profession, a jurist rather than a technical lawyer.'

(2) Three of the five members were required to be persons, who must have served in India for at least ten years. Besides, the Secretary of State had the power to appoint the Commander-in-Chief as an extra-ordinary member of the Council.

(3) The Governor-General-in-Council were empowered to make rules and orders for the convenient transaction of the business in the Council. Under this rule-making power, Lord Canning introduced the portfolio system in the Indian Government.

(4) In case of the anticipated absence of the Governor-General from the headquarters, the Governor-General-in-Council could appoint a president of the Council with all the powers of the Governor-General.

(5) The Governor-General-in-Council could authorise the Governor-General alone to exercise all or any of the powers of the Governor-General-in-Council except those of making laws or regulations.

II—Changes in the Indian Legislative Council

(1) The Legislative Council established under the Act of 1853 was reorganised. The new Legislative Council was to consist of the Governor-General's Executive Council together with not less than 6 and not more than 12 'Additional Members' (*i.e.*, members for legislative purposes in addition to the members of the Executive Council). The term 'Legislative Councillors' previously used for the 'Additional Members' was now purposely dropped.

(2) The 'Additional Members' in the Legislative Council were to be nominated by the Governor-General for 2 years. Of them not less than half were to be non-officials (*i.e.* persons not in the service of the Crown) and some of them were to be Indians.

(3) The Legislative Council was empowered to make laws for all persons, whether British or Native, foreigners or others, and for all Courts of Justice whatever, and for all places and things whatever and for all servants of the Company in and outside British India.

(4) To secure proper subordination of the Legislative Council to the wishes of the Executive, its functions were explicitly restricted to legislation and its powers of law-making were considerably limited. For instance, (a) it could not introduce any measure relating to public debt or public revenue, religion, military and naval matters without the previous sanction of the Governor-General, (b) no Act passed by the Legislative Council could be valid unless it received the assent of the Governor-General, (c) the Secretary of State had the power to disallow any law or regulation

passed by the Legislative Council and assented to by the Governor-General. Moreover, the Governor-General was given the power (in cases of emergency) to issue (without his Council) ordinances for a period of six months.

(5) The Secretary of State was to be informed of all that passed regarding legislative measures of importance in the Council. The Governor-General was also to communicate to the Secretary of State the causes of his issuing the ordinances.

III—Changes in the Presidency Governments

(1) The Act restored to the Presidency governments the power of legislation, which had been withdrawn by the Act of 1833. The Legislative Councils, analogous to that at the Centre (Calcutta), were established in Bombay and Madras. The Governor-General-in-Council were also authorised to create similar councils for the North-Western Provinces (Agra) and the Punjab.*

(2) The legislative Council in each of the Presidencies of Bombay and Madras was to consist of the Governor's Executive Council together with the Advocate-General of the Presidency and not less than 4 and not more than 8 'Additional Members'.

(3) The 'Additional Members' and the Advocate-General were to be nominated by the Governor of the Presidency for two years. Not less than half of the 'Additional Members' were to be non-officials.

(4) The Provincial Legislative Council was to legislate for whole of the province. But every bill passed by it required the subsequent assent of the Governor-General in addition to that of the Secretary of State. It was also made subject to the disallowance by the Crown.

(5) The Presidency Legislative Councils could not make any law, (without the previous sanction of the Governor-General) affecting the public debt, penal code, coinage and currency, post and telegraph, military and naval forces etc., as these were matters of India rather than local importance,

EVALUATION OF THE ACT

The Indian Councils Act of 1861 was a legislative measure of great importance. While introducing the Bill in the House of

* In pursuance of this policy Legislative Councils were established in Bengal (1862), North-Western Province (1888) and the Punjab (1898).

Commons, Sir Charles Wood had described it as 'by far the most important of the measures,' he had introduced. In the words of M.V. Pylee, 'The Act was the primary charter of Indian legislatures of the twentieth century'.*

The Act, in the first instance, made provision for the admission of Indians into the legislative councils. Sir Syed Ahmed Khan and Sir Bartle Frere had strongly emphasised the value and necessity of the non-official advice in legislation. To secure this advice, some non-official members were added to the central as well as provincial legislatures, thus, making it possible for the Indians to take share in the administration of their country. Our British rulers, on the other hand, also got the opportunity to acquaint themselves with the feelings and opinions of their Indian subjects on important questions, and remove their misunderstandings, if any, regarding the actions and intentions of the Government. The association of the Indians with the work of legislation had another advantage. It tended to lessen the distrust and antagonism, which had vitiated the Indian atmosphere since the days of Mutiny.

The Act, to its credit, restored the legislative powers to the provincial governments, and also provided for the institution of the legislative councils in some other provinces. Under this provision of the Act, the North-Western Provinces, Bengal and the Punjab had their legislative councils in course of time. There was also a gradual increase in the powers and functions of the councils. Though this process of devolution ushered in by the Act continued to be slow, yet it ultimately resulted in the grant of internal autonomy to the provinces in 1937. To quote Prof. Coupland, "In admitting Indians to the councils and restoring powers to the provinces, a dual process of Indianisation and decentralisation had been started, which was to lead, stage by stage, to Indian self-government."†

The Act had another commendable feature. It established the framework within which the Government of India functioned till the end of British rule in India. The Legislative Councils with non-official members, the portfolio system (legalised by Section VIII of the Act), the ordinance power etc. remained the part and parcel of the Anglo-Indian Constitution. Some of these features find a place even in the working Constitution of India.

* Pylee M.V. *Constitutional Government in India* P. 35.

† Coupland R. : *The Constitutional Problem in India* P. 21.

With the introduction of the portfolio system by Lord Canning, each member of the Executive was placed in charge of one administrative department or the other. He was also made responsible for the successful conduct of his department. This decentralisation of business not only made for efficiency and despatch, but also laid the foundation of cabinet government in India. It was really amusing that the man, who suppressed the Mutiny, also introduced the germs of modern government in India's body politics. Besides, the Governor-General was relieved of a good deal of routine and formal business. He could now exercise an effective control over the administration.

Though the Act could claim to be an improvement on the previous system, yet in some respects it was a retrograde measure. The legislative councils established under the Act were mere committees for the purpose of law-making. They had very limited powers. They could not examine the conduct of the executive, nor could they discuss budget or enquire into the grievances. They simply advised and assisted the executive in the work of legislation. The laws made by them were, therefore, nothing but the orders of the government. In the words of Prof. Coupland, "These councils were akin to the durbars, which Indian rulers had traditionally held in order to sound their subjects' opinion". Lady Dufferein, who visited the Council Chamber in Madras (1885) records that the speakers mostly read their speeches; the proceedings were dull, and it was not easy to hear them. A study of the proceedings of the councils also leads to the same conclusion. The fact is that the limitations under which the councils functioned made them purely advisory bodies. They were intended to function like committees and were nothing more than this.

Another glaring defect of the councils was their small size and inadequate representation of the Indian members. On an average, the Supreme Legislative Council had 4 Indian members and most of them were either big zamindars or native princes. They had no interest in the legislation for India. Prof. K.V. Punnaiah observes; "the offers of seats in the councils were often declined, and the members, who were nominated, showed the utmost reluctance to come and the utmost hurry to depart.* A lurid picture of such nominated members was thus drawn by Mr. MacNeill in the

*Punnaiah K. V. : *The Constitutional History of India*. P. 104.

House of Commons : *'A Maharaja of the North-Western Provinces was appointed a member of the Supreme Council, and he could not speak a word of English, and was not allowed to have an interpreter. After the meeting, a relative asked him how he got on. The reply was : 'At first I found it very difficult, but then there was the Governor-General who elected me. When he raised his hand I raised mine, and when he put his down, I put down mine'.*

Another British statesman, Sir Henry Cotton, has also explained the position of these members in his book, *New India*. He writes, 'A native Deputy Magistrate is not inclined to offer advice unacceptable to the Lt.-Governor to whom he owes the honour of his appointment and on whom he depends for his prospects in the service'. Obviously, the nominated members of the councils, with a few honourable exceptions, were magnificent non-entities. Their presence in the councils was of very little use, for they could not display their personal independence.

According to Hon'ble Subramania, who was himself a member of the Madras Council, the non-official members could not take interest in the work of the Council, because they were not allowed to feel any responsibility. Moreover, they were not given any opportunity to render themselves useful. The British, of course, exploited their presence in the Councils for imperial ends.

The Indians were particularly disappointed at the attitude of the authorities, who deliberately *clipped the powers of the Indian Legislative Council* to make it a weak body. They saw in it a definite setback to the constitutional progress of their country.

The Act was of a retrograde character also in so far as it empowered the Governor-General to issue ordinances. These ordinances remained in force for six months and could be as comprehensive in scope as the laws passed by the Indian Legislature. (According to Dr. R. C. Majumdar, 'The Act marks the forging of a new repressive weapon which the British Government in India carefully preserved in its armoury till the very last moment'.*)

To sum up, the Indian Councils Act of 1861 did not establish in India a representative government, nor did it give any real power or even voice to the Indians in the work of administration. The Englishmen, in effect, remained law-makers. For, the advice tendered by the additional members could be rejected by the

*Majumdar R. C. : *British Paramountcy and Indian Renaissance* P. 759.

Governor-General, who could even issue ordinances without any reference to the Council. The British Government, as a matter of fact, did not contemplate anything like a representative council or responsible government for India. Sir Charles Wood was frank enough to tell the House of Commons that the Governor-General's new Council (and the same applied to the Provincial Councils) was not intended to be a representative law-making body in the normal sense of the term. To quote his actual words, 'You cannot possibly assemble at any one place in India, who shall be real representatives of the various classes of the native population ..To talk of native representatives is, therefore, to talk of which is simply and utterly impossible'. Unfortunately for India, the subsequent Secretaries of State continued to uphold Charles Wood's doctrine that the parliamentary form of government was unsuitable for India, and they repeated it like parrots for the next fifty years.

FURTHER READING

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CHAPTER 8

The Indian Councils Act, 1892

The Indian Councils Act of 1892 constituted the second instalment of reforms, which had been introduced in the Indian Councils from time to time.* Though this instalment was conceded in a spirit of over-caution, yet it definitely marked 'a decisive step, and a step in advance'. In the words of Hira Lal Singh, "The Act of 1892 was the revised and enlarged edition of the Indian Councils Act of 1861. It marked, on a modest scale, the extension of the experiment, which had been inaugurated thirty years before."†

CIRCUMSTANCES FAVOURING ITS ENACTMENT

According to Dr. A.K. Majumdar the Act of 1892 owes its inception to Lord Dufferin, whose efforts in that direction entitle him to a place near Ripon.‡ The Governor-General, no doubt, took an active interest in the question of reforms. He emphatically impressed upon the Home Government the urgency of re-organising the Indian councils. But long before he paid a serious attention to the matter, the growth of higher education, the influence of press and the establishment of a number of associations demanding the reconstitution of the Indian Councils, had paved the way for the enactment of this measure. Hence, the Indian

*The Acts under which the Indian Councils were reformed during the British rule in India were passed in 1861, 1892, 1909, 1919 and 1935. The Indian Councils Act of 1861 was, obviously, the first in the series of these measures.

†Singh Hira Lal : *Problems and Policies of the British in India* PP, 118-19.

‡Majumdar A. K. : *Advent of Independence* P. 9.

Councils Act of 1892 was the cumulative outcome of a number of forces, which had long been working in that direction. A brief account of these factors and forces may be given as under :—

Dissatisfaction with the Act of 1861

The legislative councils established under the Act of 1861 were 'gilded shams.' They were very small in their size. They lacked the essential attributes of a legislature. They did not provide adequate representation to the Indians, for they had in them either retired officials or big zamindars or native princes. The presence of such persons in the councils was of little use to the Indians, though their British masters elicited a good deal of information for their guidance. The councils as such could not claim to be representative in character, and the Indian representatives in them were 'magnificent non entities'. As a matter of fact, the principle of caution had been carried to such an extent that the legislative councils were denied the opportunity of making themselves really useful bodies. They were merely committees for law-making and the laws made by them were nothing but the orders of the government. The Indian National Congress and the liberal spokesmen, both in India and England, expressed dissatisfaction with the Act of 1861, which did not give any real power or even voice to the Indians in the administration of their country. This made the British Government to look into the matter and enact this measure.

Spread of Western Education and political Consciousness

During the second half of the nineteenth century, the higher education in India made a rapid progress. Universities were set up in Madras, Bombay and Calcutta in 1857. Punjab, too, established its own university at Lahore in 1882. The number of schools and colleges multiplied and by 1882 there were 3,916 secondary schools in British India with an enrolment of 2½ million students. The next decade witnessed greater progress, with the result that by the year 1891 the strength of college-going and school-going students rose to 23,000 and 600,000 respectively. This spread of western education brought with it political awakening. There was also the growth of nationalism, which drew added inspiration from the Government's discriminatory measures (like Arms Act, Vernacular Press Act etc.). The controversy over the Ilbert Bill of 1883 proved a blessing in disguise. It shook Indians' faith in British sense of justice and instilled in them

feeling of racial self-respect. It also advanced the cause of national unity. Thus, the spread of western education and the consequent political awakening among the Indians created such an atmosphere in the country as could urge the Government to introduce reforms in the existing Indian Councils.

Efforts of Indian National Congress and other Associations

The Indian Councils Act of 1892 may also be, in a measure, attributed to the efforts of the Indian National Congress and some other political organisations. Sponsored by Mr. A. O. Hume and some eminent Indian leaders, the Congress at its very first session (in 1885) laid stress on the necessity of reconstituting the Indian Councils. It also made a demand for giving more powers to the legislatures. In 1886, the Congress elaborated its previous resolution and thereafter never ceased impressing upon the Government its demand for representative councils. Besides the National Congress, some other political organisations, like Madras Mahajan Sabha, Indian Association, Calcutta, the Sarvajanak Sabha of Poona etc. also asked for substantial reforms in the councils. For example, in December 1885, the Madras Mahajan Sabha put forward the demand for selection of members by a limited electorate. In 1887, the Chambers of Commerce in Bombay, Madras and Calcutta pleaded in favour of investing the legislatures with more powers. The Madras Chamber of Commerce pointedly observed that it was a poor commentary on the progress of civilization that 200 millions of people did not possess the smallest voice in the passing of the budget. As a result of these demands and efforts by the various organisations, the question of council reforms became quite urgent and attracted the attention of Lord Dufferein.

Role of Lord Dufferein

Fortunately for the demands of the Indians, Lord Dufferein's attitude towards the question of council reform was quite favourable. He looked upon the desire of the educated Indians to take part in the management of their affairs as a 'legitimate and reasonable aspiration'. It was, therefore, that early in 1886 he recorded his opinion in favour of carrying out the experiment of liberalising the provincial councils. He also penned his famous minute, which, while critical of the Congress, dealt with the question of reforms. He lent his full support to Sir Alfred Lyall's proposals for a council for the North-Western Provinces. In his

speech on the day of Queen's Jubilee celebrations, the Governor-General again referred to the question of reforms in the Councils. He repeatedly proposed to Lord Cross, the then Secretary of State for India, for the introduction of elective element in legislatures. In short, Lord Dufferein pursued this subject consistently till the end of his viceroyalty, and his efforts in this direction were highly commendable.

The Governor-General's anxiety for reforms in the councils was, in fact, due to some political and administrative considerations. He believed that the quick introduction of reforms would popularise the Indian Government. The advance on the part of the Central Legislature would give the Indian Government a great freedom from India Office. It was also hoped that the improvement in the Central Legislative Council might enable the Government to state its views and purposes in a manner more likely to reach the people than those provided by its Blue Books and reports. The European merchants in India too favoured the reforms, because they felt that their interests were being sacrificed for those of the city of London. Whatever might be the considerations with the Governor-General, he was certainly in favour of reforms in the Councils. He did not, of course, want to introduce parliamentary system. He is said to have plainly told the Executive Council that it would be a mistake on the part of the Indians to conclude that he was contemplating to set up parliamentary system after the British model. The executive, as before, would remain directly responsible not to any local authority, but to the Sovereign and the British Parliament.

Recommendations of Dufferein Committee

In September 1888, Lord Dufferein communicated his views to his Council, which gave its unanimous support to his proposals. A committee consisting of Sir George Chesney, Sir Charles Aitchison and James Westland was then appointed to draw up a scheme for the reorganisation of the Councils. The main recommendations of this Committee were : (1) the expansion of the Madras, Bombay and Bengal councils with enlarged functions ; (2) the establishment of an executive council in Bengal as a condition prerequisite to the reconstitution of the legislative council ; (3) the reorganisation of the councils with reference to the representation of the more important interests ; (4) the representation

of Muslims in proportion to their population ; (5) the reservation of a few seats to be filled-up by nomination.

After perusing the Committee's report, Lord Dufferein formulated a definite view and elaborated a concrete scheme to give effect to it. His scheme, in his own words, 'was a plan for the enlargement of our provincial councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalisation of their general character as political institutions.' The Conservative Government in England radically differed with Dufferein. Lord Salisbury, the then Prime Minister, in a memorandum of December 1888, remarked that Dufferein's proposals inaugurated the most important changes undertaken since the dissolution of the Company. He regarded the introduction of the elective system as dangerous. Hence, Lord Dufferein's recommendation regarding elective principle could not find place in the Bill that was introduced by Lord Cross in the House of Lords in February 1890.

Lord Northbrook on 6th March 1890, expressed in the House of Lords his regret that Cross's Bill made no position for choosing some non-official members by a system of election or selection. His regret was shared by Lord Ripon and Lord Kimberley. Lord Kimberley strongly favoured the introduction of a partially elective system. Ultimately, an amendment, known as *Kimberley Clause*, was adopted, which, in a way, permitted (though did not prescribe) the adoption of the elective principle. This Bill passed quickly through the Upper House, but was not taken up in the House of Commons, which was too busy with the Irish affairs. When the Bill was reintroduced in February 1892, controversy again centred round the question of adopting the elective principle. Mr. Maclean, a member of the House of Commons, strongly criticised the *Kimberley clause*. He held that if Lord Ripon and Lord Reay were appointed Secretary for State and Governor-General respectively, then they would strain the *Kimberley Clause* in any way in order to introduce the elective system. While Maclean was afraid that it might lead to the introduction of the elective principle, another member of the House, Mr. Schwann was not satisfied with it, because it did not specifically prescribe the introduction of the elective principle. The Government spokesman explained his own point of view. At last the elective principle was adopted *de facto* though not *de jure*. The Bill was passed by

both the Houses of Parliament on 26 May, 1892 ; it received royal assent on June 20, 1892.

MAIN FEATURES OF THE ACT

The Indian Councils Act of 1892 was passed by a Conservative Government, but the rules and regulations with regard to it were sanctioned by the succeeding Liberal Government. Moreover, the Act did not introduce any new principle. It was designed on the pattern of the Act of 1861. For a time, it was known, at least in India, as Lord Cross's Act.* Its important features were as under :

I. Expansion of the Legislative Councils

1. The Act provided for an increase in the number of the 'Additional Members' both in the Supreme and Provincial Legislative Councils. The Supreme Legislative Council was to have not less than 10 and not more than 16 'Additional Members.' (It meant that addition of only 4 members was made to the existing strength of the Council. For, under the Act of 1861 the minimum number of the 'Additional Members' was fixed at 6 and maximum at 12).

2. The strength of the 'Additional Members' in the Provincial Councils was also enlarged. In case of Bombay and Madras, the number of 'Additional Members' was to be not less than 8 and not more than 20. The maximum number of the additional members of the councils of Bengal and North-Western Provinces was increased to 20 (from 12) and 15 (from 9) respectively.

3. As under the Act of 1861, the term of 'Additional Members' remained two years, and not less than half of them were to be non-officials.

4. The Governor-General-in-Council were empowered, with the approval of the Secretary of State-in-Council, to make regulations as to the conditions under which the nomination of the 'Additional Members' was to be made.

II. Functions and powers of the Legislative Councils enlarged

1. The members of both the Central and Provincial Councils were entitled to discuss the budget. In case of Provinces, the

*This seems to be appropriate for practically from the beginning political opinion in India criticised it for not containing those provisions, which Cross in his wisdom had felt were unapplicable to Indian conditions. *Majumdar. A.K. Advent of Independence* P. 10.

discussion was limited to those branches of revenue and expenditure, which were under the control of the Local Governments. The discussion of imperial finance was not allowed.

2. The members of the Councils were also conceded the right to ask questions on matters of public importance. But no question could be asked without serving 6 days' previous notice. Besides, the President of the Council had the power to disallow any question without giving any reason thereof. In the Provincial Councils, questions were to be confined to matters under the control of the Local Governments.

III—Introduction of elective element in the Councils

Though term 'election' was neither mentioned in the Act nor in the regulations, yet the Act cautiously introduced elective element in the Councils. The rules made by Lord Landsdowne's Government provided for the election of (a) 8 members for each Local Council by the Municipalities, District Boards, Chambers of Commerce, Universities etc., and (b) 4 for the Supreme Council by the non-official members of the Local Councils. This was, obviously, indirect election. The Government of India, as a matter of course, accepted the candidates recommended by the representative bodies.

EVALUATION OF THE ACT

The reforms introduced by the Act of 1892 were neither comprehensive nor impressive. They offered to the Indians consultative Councils, and not representative institutions. Worse still, the rules framed under this Act made the Councils still more ineffective. The Indian National Congress rightly complained that the real spirit and intentions of the Act were ignored by the rules and that what was given by the right hand was taken away by the left. From the Indian point of view, the Act was disappointing in more than one respect.

Inadequate expansion of the Supreme Council

Under the Act of 1892, an increase of only four members was made in the existing strength of the 'Additional Members' of the Supreme Council. In the words of Mr. Schwann, it was ■ 'very paltry and miserable addition'. Lord Dufferin's argument, that he could not recommend a large increase, because the business to be transacted by the Supreme Council was different from that of the Parliament, was far from convincing. A country like India

with its multitudinous problems needed a much larger council. Moreover, an addition of 4 members, after an interval of thirty years, was not in consonance with the progress made by the country during this period. Finally, as compared to the Provincial Legislative Councils, the Supreme Council was given very little concession in matter of representation.

Provincial Councils too small to represent the population

At the time of the enactment of this measure, Mr. Gladstone and Lord Salisbury had expressed the hope that the Councils would give representation to the living strength and vital forces of the whole community of the people. But the Provincial Councils, constituted under the Act, did not provide even a tolerably moderate representation for the people. It was, indeed, very disappointing. In his presidential address at Poona in 1895, Mr. Surendranath Banerjee pointed out : "In the United Kingdom, a population of 40 million is represented by 670 members. In Bengal, a population of 70 million is represented by only 7 elected members or by 10, if we take the nominated non-official members to represent the people or by 20 members, if we take the whole Council to represent the Province." Obviously, the legislative councils, even after their expansion in 1892, were ridiculously small bodies. At their meetings, a handful of officials and two or three complaisant Indian gentlemen sat round a table and read manuscript speeches in turn. The critics did not unfairly describe them as 'limp councils'.

No provision for the political education of the Indians

The legislative councils, established under the Act, were not intended to be an instrument of political education. It was quite clear from the covering despatch of Lord Cross, who wrote : "The objects of the Act were to bring the legislatures into closer relation with the best representatives of public opinion in India, and of multiplying the opportunities for an interchange of views and information between the Governments and the Councils.' Verily, the circumscribed limits within which the Councils had to function, the restricted number of additional members and the limited and indirect mode of election, left little room for political training. As a matter of fact, the Government was more particular about the political advantages of the scheme than its educative value. It is evident from the fact that the members of the Council of the Punjab (constituted in 1897) were denied even the right of



interpellation. Besides, they were nominated without any recommendations from popular and public bodies.

Unnecessary restrictions on the powers conceded by the Act

According to A.B. Keith the additional powers conceded by the Act were not very important. And they, too, were subjected to unnecessary restrictions. For example, under the Act of 1892 the Supreme Council had been entitled to discuss the budget, but its members could not move any resolution in respect of any item in the budget or divide the Council thereupon. In view of the fact that Government had a strong majority in the Council, it was altogether ■ needless restriction. If the Government was firmly resolved to oppose a resolution, it could not be carried through even if the non-official members were united to a man. Similarly, the restrictions imposed on the right of asking questions were not desirable. Referring to the reforms of 1892, the Government of India wrote in 1908 that the facilities for debates were restricted, and the nature of discussion became of a 'desultory character'.

Principle of election—restricted and unsatisfactory

The reforms of 1892 introduced a 'species of indirect election', and recognised the necessity of appointing the representatives of minorities. The principle of communal representation, though neither mentioned in the Act nor in the regulations issued under it, was in a way recognised. The Local Governments were directed to select the representatives of races, classes and interests. The right of selection was, however, not conferred upon any religious community. It was left to the Governor-General and the Governors to nominate persons belonging to certain religious bodies in case they failed to secure adequate representation by election. All this was, obviously, obnoxious as well as dangerous.

Besides, the representation granted to the various classes and territories was neither uniform nor fair. In Bombay Presidency, out of 6 seats, 2 were allotted to the European merchants, but no seat was given to the Indian traders. Similarly, Poona and Sitara had no representation, while Sind got two seats in the legislature.

Revised and enlarged edition of the Act of 1861

The Act of 1892 was the revised and enlarged edition of the Indian Councils Act of 1861. Both these Acts were designed on the same pattern. The aims of both of them were practically the same. Besides, in case of both the Acts of 1861 and 1892, (1) the

use of the term 'additional' was made for members added to the executive councils ; (2) the proportion of non officials was to be not less than half; (3) a two-year term was fixed for the members, and (4) the size of the Legislative Councils remained small. It is, all the more interesting that (5) both Canning and Lansdowne were anxious to bring the reforms into operation before their departure.

The Act of 1892 could also claim to be a definite improvement on the previous measure. The legislative councils constituted under it marked a notable advance in more than one respects. Their size was enlarged; their powers were increased, their functions multiplied and consequently their status improved. Although the improvement was not of kind, it was definitely of degree.

The constitutional advance made under the Act may appear to be meagre, yet it marked a definite stage in the development of the representative institutions. According to Dodwell the reforms of 1892 were quite in keeping with the Indians' new and relatively feeble demand. The educated Indians also looked upon them as something valuable. Sir Surendranath Banerjee held the view that the foundations of the representative government were well and truly laid by the Act of 1892. As a result of these reforms, men of Indian birth got an opportunity to sit with the Viceroy and his Councillors for the purpose of law-making. They had the right to express their views, which were listened to with great deference. The Indians also had the privilege of sharing counsels at higher level. The Government, on its part, became morally bound to meet their criticism in right earnest. Obviously, it was all in favour of India's constitutional progress.

Some concessions with regard to the right of interpellation were also granted by the Act. But their value can adequately be appreciated if we do not lose sight of the fact that the restrictions imposed upon this right were, in no way, more comprehensive than those meant for the British House of Commons.

Though there was no real satisfaction with the reforms which had been introduced by the Act, yet the legislative councils attracted the best intellectuals of the time. Eminent Indians like Gopal Krishan Gokhale, Surendranath Banerjee, Pherozeshah Mehta, Dinshaw Wacha, Rash Behari Ghosh, S. H. Bilgrami etc. etc. took their share in the legislation of the country and left a deep impress of their knowledge, eloquence, wisdom and sound

statesmanship. To quote Sri Ram Sharma : "Though the Government refused to accept the advice of the members publicly (as it would have amounted to admitting that Indians could teach their masters how to govern their country), yet their influence on the course of administration was considerable". Had the Act of 1892 been a more substantial measure of reforms, it would certainly have proved more beneficial both for India and England. For, the Indian intelligentsia, which became a set of discontented and hostile critics of the Government, would have gladly rallied to the side of the Government. Even Sir V. Chirol, by no means a friend of India, has admitted this fact. He writes : 'It must be conceded that had Government at that time taken the Congress by the hand instead of treating it with disdain and suspicion, it might have played loyally and usefully a part analogous to that of Her Majesty's Opposition at home'.

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12. *R. Coupland* : Indian Problem
13. *R. C. Majumdar* : British Paramountcy and Indian Renaissance

CHAPTER 9

The Indian Councils Act, 1909 or Morley-Minto Reforms

(The Indian Councils Act of 1909, usually known as the Morley-Minto Reforms, was a constitutional measure of great importance.) Though the changes embodied in it signified no new policy, yet they definitely represented a 'considerable advance on the previous system.' Besides, the Act marked the close of the first phase of Indian politics, and strengthened the desire of Indian nationalists for greater self-government. The posterior historians are of the view that if this instalment of reforms had come in 1905 (instead of 1909), it would have been universally hailed as a great political concession. And it would have been politic on the part of Mr. Morley, if he had introduced the English parliamentary system through his Reform scheme of 1909. For, never again did more favourable conditions prevail.

CIRCUMSTANCES FAVOURING ITS ENACTMENT

The decade following the Indian Councils Act of 1892 was marked by an unusual economic depression and political agitation. It also constituted one of the worst periods of British Indian administration. The Indian nationalism, in consequence, assumed new dimensions. The subsequent developments in India and

abroad gave it added strength and the extremist propaganda spread throughout the British dominion. (The Government repression to check the nationalist spirit further worsened the situation and gave birth to terrorism.) The cumulative result of this agitation was the Morley-Minto Reforms of 1909, which Amery once described as 'the first response to the growing nationalist movement in India itself'.*

Dissatisfaction with the Act of 1892

The Indian Councils Act of 1892 did not satisfy the people in general and the extreme wing of the advanced party in particular. (The legislative councils established under it were ridiculously small bodies. They could not claim to be the real representatives of the people nor did they possess anything of the modern legislatures.) The rights given to them were extremely limited, and their Indian members had no share in the executive government. At their meetings a handful of officials and two or three complaisant Indian gentlemen sat round a table and read out manuscript speeches. The Indian National Congress expressed dissatisfaction with these 'limp councils' and asked for their immediate expansion. (At its session in 1904 and again in 1906, it also made a demand for 'a larger and truly effective representation of the people in the councils and a larger control over the financial and executive administration.') The continued efforts of the Congressmen at last obliged the British authorities to offer in the Reforms of 1909 an answer to their demands and agitation.

Uncommon sufferings of the Indians

In the closing years of the 19th century, India was driven into a whirlpool of sufferings. Plague followed by famine, famine followed by plague, malaria, influenza, such was the story of India's woes between 1896 and 1900. Thousands of Indians were swept away by the famine that broke out in 1896-97. The plague that followed close on its heels proved more disastrous. The loss of lives ran into millions.† The Government measures to combat the calamity proved too inadequate to save the dying Indians. To the havoc caused by the twin calamities was added the misery of the famine of 1899-1900. It affected an area of 400,000 square miles and caused an uncommon mortality. Lord Curzon personally toured the affected areas and appealed for help

* Amery L. S. : *India and Freedom* P. 23.

† By the end of 1898 the recorded number of deaths reached a total of 1,73,000, which was probably considerably below the real mortality.

both from inside and outside the Empire. The world opinion vehemently criticised the Indian Government and held it responsible for the misfortunes of the Indians. Bal Gangadhar Tilak also condemned the Government for its callous indifference. He was immediately imprisoned on the charge of inciting the Indians to violence. These sad happenings ultimately turned the Indians against the Government and paved a way for the emergence of militant nationalism.

Curzon's Viceroyalty (1898–1905)

Lord Curzon's viceroyalty also gave a fillip to the prevailing unrest and indignation. His imperious nature, autocratic temperament and bureaucratic attitude widened the gulf between the ruled and the rulers. (In the name of efficiency, he overhauled the whole Indian administration and imported men direct from England to fill up the highest ranks of civil employment.) In spite of a strong protest of the Indians, he carried into law the Calcutta Municipal Act (1898) to hold up the progress of local self-government. (He also enacted the Indian Universities Act of 1904. It aimed at checking the growth of the English-educated class, which was becoming increasingly more discontented with the Government.) His Official Secrets Act (1904) was a clever device to restrict the liberty of the Indian Press. These measures of the Viceroy aroused uncommon and intense opposition and there spread in the country a storm of indignation. (To make matters worse, Lord Curzon took in the Partition of Bengal (1905), another unfortunate administrative measure.) And then, in spite of unanimous and persistent opposition, he refused to understand the real situation. His stubbornness at last cost him popularity; intelligentsia developed hatred for him and even Moderates were constrained to condemn his administration. All this, in consequence, increased discontentment against the government and reinforced the national agitation.

Thrilling developments outside India

In the early years of the 20th century, there took place some very thrilling developments outside India. They not only infused a new spirit among the Indians but also strengthened their movement for self-government. The victory of Japan over Russia, in 1905, was of particular significance. It considerably changed the situation in India as well as Indians' outlook. It also aroused an uncommon enthusiasm among our countrymen. The news of this

Indian

victory, wrote *The Bengalee*, was discussed not only by the educated classes but also by the masses. It was popularly interpreted as the victory of Asia over Europe, of the East over the West. It dispelled the false belief in the invincibility of the Western might and symbolised the regeneration of the East. It revived new hopes in the minds of the Indians. They could not but infer that India, with her by far more glorious past and rich heritage, could be as great a nation as any Asian power. It was also felt that imbued with the spirit of self-sacrifice and patriotism, the Indians could get rid of their callous British rulers.

The defeat of the Italians by the Abyssinians and the new national movements in Egypt, Persia and China also had a deep impact on the minds of the Indians. Dadabhai Naoroji in his presidential address at the Congress in 1906 pointedly remarked: "Indians cannot continue to remain subject to despotism, when China in the east and Persia in the west of Asia were waking up". He also pleaded for the grant of self-government to the Indians. Thus, the events outside India considerably enthused the Indians' aspirations and strengthened their case for constitutional concessions.

Humiliation of Indians abroad

The humiliating treatment meted out to Indians in South Africa, England and Canada also had its repercussions on the Indian national movement. The Indians living in Africa were subjected to many intolerable discriminations. They were not allowed to build houses in areas specified for the Europeans. Their children could not receive education in the first-rate schools over there. No Indian was allowed admission in some of the hotels and hospitals. Besides, they could neither travel in the first class compartments of the trains nor walk on the footpaths. They had to live among 'dung heaps' located outside the towns. Thus, the Indians in Africa did not enjoy even the ordinary human rights. In Natal and Transvaal, the Indians had to submit to the humiliating imposition of £3 Poll tax. Worse still, by the Asiatic Registration Act of 1907, the Indians in Transvaal were required to be registered by finger prints like criminals. This filled the cup of Indians' humiliation. It also brought home to them that their humiliation abroad was the inevitable consequence of their degradation at home. Need for the establishment of a national government in India was, therefore, bitterly felt.

Bal Gangadhar Tilak popularised the slogan : 'A good foreign government is less desirable than an inferior national government'. A strong feeling to end the British rule from India rapidly spread in the country. In consequence, the idea of reforms in existing system found favour with the authorities.

Vigorous propaganda of the Extremists

The dissatisfaction with the British rule in India gave birth to the left wing in the Congress Party. Bal Gangadhar Tilak, Lala Lajpat Rai and Babu Bipin Chander Pal emerged out as its leaders. They were, undoubtedly, men of strong character and firm convictions. They were also patriots to the very core. They had no faith in the British sense of justice, nor did they expect any political concession from them out of purely benevolent motives. They had innate hatred for the foreign government. They were also opposed to the Moderates' methods of political agitation. They believed in self-reliant and independent action. Convinced as such, these extremist leaders launched a crusade against the alien bureaucracy and released the forces, which gave birth to an anti-imperialist movement.

Bal Gangadhar Tilak, the first in the trio, was the real founder of the anti-imperialist movement. He looked upon the foreign rule as a curse for his countrymen and wanted to free them from its domination. He always advocated the cause of the Indians and never failed to condemn the Government's anti-national measures. He sought to blend politics with religious nationalism. He gladly courted imprisonment and asked his countrymen to face the British repression with courage and determination. His powerful speeches and popular slogans, his uncommon sufferings and self-sacrifices taught the young Indians the philosophy of defiance, and converted them into rebels against the Empire. His teachings, his organisation and methods, his anti-foreign propaganda, his gymnastic clubs, writes (Dr. Ishwari Prasad, "sowed the seeds of rebellion and found wide acceptance among the people").* For his militant nationalism the British journalist V. Chirole described Tilak as the 'Father of Indian Unrest'. According to W.S. Blunt, "Tilak contributed more by his life and character than by speeches and writings to the making of the new nationalism."

* Dr. Ishwari Prasad : *History of Modern India* P. 492.

His able lieutenants, Lala Lajpat Rai and Babu Bipin Chander Pal also worked for the growth of new nationalism, which gradually spread throughout the British dominion. The authorities, who were anxious to check the further shifting of the balance of power in favour of the Extremists, could not afford to be indifferent towards the situation. They found its remedy in repression-cum-conciliation. The reforms of 1909 were, therefore, offered as a bait for conciliation.

Appointments of Minto and Morley

The authorities in London were fully alive to the fast deteriorating Indian situation. They found it difficult to prolong the stay of Curzon as Governor-General. They called him back in November, 1905 and appointed Mr. Minto as his successor. The elections of 1906 in Britain put the Liberals in power. They were known to be friendly to Indian aspirations. They appointed Mr. John Morley as Secretary of State for India in the new Cabinet. Mr. Morley was a man with wide political experience and a liberal tradition. He took a realistic view of the Indian problem and found in the reforms the remedy of the Indian situation. The same view was held by the Prince of Wales. On his return from India in the winter of 1906, he told Mr. Morley that the watch-word of British rule in India should be wider sympathy as well as firm justice. Mr. Morley, thereupon, took up the matter of reforms with Lord Minto. Fortunately, his attitude was also favourable. After preliminary negotiations and discussions with Morley, Lord Minto appointed a committee of four members with Sir A. T. Arundel as its chairman, to consider the whole question of political reforms and submit its report thereof.

Demand of the Muslim Deputation, 1906

Before the Arundel Committee could submit its report, Mr. Archbold, the Principal of Aligarh College, got scent of the nature of reforms to be introduced in the near future. He instigated the Muslims to send a petition to the Viceroy stressing that the principle of election, if introduced, would harm the interests of the Indian Muslims. He advised them to ask for a system of nomination and more representation in the legislative councils. Soon after this, a deputation of 36 prominent Muslims, with the Aga Khan as their leader, waited upon

the Viceroy at Simla. The address presented by them demanded several special concessions for the Muslims. The two major demands were, however in brief, like this : (i) Muslims should be given a quantum of representation in excess of their numerical strength ; (ii) they should be given the right of sending their own representatives themselves through separate communal electorates. They based their claim for special concessions on the political importance of the Muslim community and the services it had rendered to the British Empire. Though the arguments advanced by the Aga Khan deputation were hardly tenable, Lord Minto, nevertheless, conceded their claim with readiness. He also assured them of full support, for he found in it an opportunity of driving a permanent wedge between the Hindus and the Muslims.*

Government repression and terroristic activities

While initiating the policy of reforms in the Councils, the Government also undertook repressive measures. They included lathi-charges, vindictive punishments, quartering of troops and legislative enactments. An ordinance was issued by the Viceroy in 1907 (Seditious Meetings Act) restricting the right of holding public meetings. The next year (1908-called Black Year) witnessed the passing of more stringent measures viz. Newspaper (Incitements to Offences) Act, Criminal Law (Amendment) Act, the Explosive Substance Act, etc. etc. These measures increased the spirit of resistance, rendering the situation far more serious. Bengal became the hot bed of terroristic activities and the Punjab also saw riots in Lahore and Rawalpindi. The situation in Maharashtra also became very dangerous. According to R. C. Majumdar... "by the end of 1908 law and order as well as rule of law had simultaneously vanished from the country." These unhappy and alarming developments made the authorities nervous, thus, making them more considerate to the question of reforms in the existing set-up.

Arundel Committee Report and Reforms of 1909

The Arundel Committee, instituted by Lord Minto, submitted its report in October, 1906. The Governor-General-in-Council

*The Muslim League's demand for separate electorates was strongly opposed by the Hindus, and even some Muslims themselves. A Muslim publicly blamed his co-religionists for the attempt. Which was not a very laudable one—to create an irreconcilable Ulster in India.

discussed the proposals and then sent them to the Secretary of State for examination. The Secretary of State lost no time in consulting the Cabinet and his Council on the despatch received from Lord Minto. Thereafter, he authorised the Government of India to refer the proposals to the Local Governments in order to invite public opinion. This procedure took a period of about two years. The Secretary of State then drew up the final proposals, which were approved by the Cabinet. In February 1909, a short bill based upon these proposals was introduced in the House of Lords and this became the Indian Councils Act of 1909.

MAIN PROVISIONS OF THE INDIAN COUNCILS ACT, 1909

or

(FEATURES OF MORLEY-MINTO REFORMS)

The Indian Councils Act of 1909 was not a lengthy document. It had only eight clauses. It merely laid down the framework of the new councils. The details about them were fixed by the regulations made under the Act. Its important features may be explained as under :—

(a) *Expansion of the Central (Imperial) Legislative Council*

The Morley-Minto Reforms enlarged the size of the Imperial Legislative Council. Under the Act of 1892, the maximum number of the 'Additional Members' authorised to sit with the Governor-General and his Council for legislative business was only 16. It was now raised to 60, the total strength of the Central Legislative Council being fixed at 69. Out of these 69 members, 37 were to be officials and 32 non-officials. Of 37 officials 28 were to be nominated by the Governor-General, while the remaining 9 were to be the ex-officio members of the Governor-General's Council.* The 32 non-official members of the Council were to consist of 27 elected non-officials and 5 nominated non-officials. The 27 elected members were to be returned by three different kinds of constituencies :—

(i) *General Electorates*—13 members—Eight of them were to be returned by the non-official members of Bengal, Bombay, Madras and U.P. Legislative Councils in the order of two by each province. The remaining five were to be returned by the non-official

*The Governor-General, 6 ordinary members and 2 extra-ordinary members of the Viceroy's Council.

members of the Punjab, Bihar and Orissa, Assam, Burma and C.P. in the order of one by each Legislative Council.

(ii) *Class Electorates*—12 members—(a) 6 members by special land-holders' constituencies in the six provinces—one from each—Bengal, Bombay, Madras, U.P., Bihar and Orissa and C.P. ; (b) 6 members by separate Mohammadan constituencies—two from Bengal and one each from Madras, Bombay, Bihar and Orissa and U.P.

(iii) *Special Electorates*—2 members—one each from Bengal and Bombay Chambers of Commerce.

In the Imperial Legislative Council, a substantial official majority was retained. For, Morley insisted that it was necessary for maintaining the undisputed supremacy of the British Parliament over Indian affairs.

(b) *Expansion of Provincial Legislative Councils*

Like the Imperial Legislative Council, the size of the Provincial Legislative Councils was also enlarged. Their total strength, as fixed by the Regulations, was as under :—

(a)	Bengal Legislative Council	52
(b)	Madras „ „	47
(c)	Bombay „ „	47
(d)	U.P. „ „	47
(e)	Eastern Bengal and Assam	41
(f)	Punjab	25
(g)	Burma	16

The members of the Provincial Legislative Councils were also classified into : elected, officials, and nominated non-officials. The elected members were to be returned by three different kinds of constituencies—the general, the class and special electorates. The official majorities in the Provincial Legislative Councils were dispensed with, because the powers of the Councils were very limited. Besides, the Head of the Government in the Province had the power to withhold his assent to any measure passed by the Council. It would not be out of place to mention here that the non-official majorities, as provided by the Act in the Provincial Councils, did not necessarily mean the majorities of the elected non-official members.

(c) *Enlargement of the Powers and Functions of the Legislative Councils*

The Indian Councils Act of 1892 had empowered the members

of the legislative councils to discuss the budget but they could not move resolution about it or divide the council. They were also given the right to ask questions under prescribed conditions and restrictions. The Morley-Minto Reforms considerably enlarged the powers and functions of the legislative councils. They conceded to them the right of asking supplementary questions. The Councils also got the right of discussing and moving resolutions on budget but not of voting. Certain heads of revenue and expenditure were not open to discussion. Besides, the members of the councils had the right to discuss and vote upon resolutions on matters of general public importance. The President had, of course, the power to disallow any resolution or part of it, without giving any specific reason and the Government was under no obligation to accept the resolution even on public matters.

Mr. A.J. Belfour expressed the fear that the Indian councillors would unnecessarily attack and embarrass the officials by asking them supplementary questions. But history has proved that Belfour's apprehensions were unfounded. Even the authors of the Montford Report admitted that the right of interrogation was never abused.

(d) Restricted and discriminatory franchise

The franchise, as finally provided by the Act, was neither wide nor uniform. It was, on the other hand, narrow and discriminatory. Besides, it was based on many unjust, invidious and humiliating distinctions between the Muslims and the non-Muslims. For example, the Muslims, who paid an income tax on an annual income of three thousand rupees or land revenue in the same sum and the Mohammadan graduate of five years' standing had been given the right to vote for the Imperial Legislative Council. But a Parsee, Hindu or Christian who might be paying an income tax on three lakhs a year was not entitled to vote. Also a non-Muslim graduate of even 30 years had no right to vote. Obviously, it was a great injustice with the non-Muslims. Pandit Madan Mohan Malaviya, in his presidential address at Lahore Congress, regretted the anomaly and said : "It is, indeed, very sad that men like Sir Gurudas Banerjee, Dr. Bhandarkar, Sir Subramania Iyer and Dr. Rash Behari Ghose have not been given a vote, which has been given to every Mahommadan graduate of five years' standing".

Besides being discriminatory, the franchise was based on very high property qualifications. For the Imperial Legislative Council,

rich landlords with specific income (Rs. 15,000 per annum in Madras) or certain minimum land revenue payments (ordinarily Rs. 10,000 a year) or with high titles (like Raja or Nawab) or with certain honorary offices (honorary magistrates) were given the right of voting. As a result of this extremely narrow franchise, only a few privileged persons had the right to vote. The largest constituency, which returned members to the Imperial Council, had not more than 650 votes. In some cases, the number of voters in a constituency did not exceed 9 or 10. To sum up, the qualifications for voters were very high; they were not the same everywhere too; they varied from one electorate to another and from province to province.

(e) Excessive share of representation for the Muslims

On the ground of their alleged political importance, the Muslims were accorded privileged treatment in matter of representation in the legislatures. They were given more seats than their proportion to the total population would entitle them to hold. For example, the Muslims in the U.P. formed one-sixth of the population of the province, but they were given eight seats out of a total of 26 non-official seats in the provincial council. If this favour had been done to protect the interests of the Muslim minority in the U.P., then some provisions should have been made to protect the interests of the Hindu minorities in the Punjab, Bengal and Assam too. But they were left out in the several cold. Besides, direct representation had been given to Mohammadans and refused to non-Mohammadans. The Indian National Congress expressed dissatisfaction with this unfairly, preponderant share of representation, which had been given to the followers of one particular religion. It also criticised the inequalities of franchise.

(f) Separate communal electorates for the Muslims

The Morley-Minto reforms conceded special communal electorates to the Muslims. Some seats in the Legislatures were reserved for the Muslims and they were to be filled up by the Muslims chosen only by Muslim voters. The avowed purpose of communal electorates was to secure the adequate representation of the Muslims in the Legislatures, but its real object was to break up the national unity by creating communal divisions. To quote N. Srinivasan; "The concession of separate electorates was a fateful decision for India. From the day of that decision, India

has known no communal peace. Indian politics became a battleground of warring religions and communities. The growth of a healthy democracy based on a common, equal and secular citizenship became impossible". Rai Bahadur R.N. Mudholkar expressed the view that the separate electorates were calculated to retard the concord and harmony between Mohammadans and Hindus, to obstruct the intellectual and political advancement of the Mohammadans themselves, and the growth of a sturdy catholic public spirit and life among them."† Verily, the communal electorate for the Muslims was the worst part of the Morley-Minto constitution. With it began the process, which slowly but steadily led to the inevitable end—the partition of India forty years later.

(g) *Strict qualifications for membership to the Councils*

The regulations prescribed a number of qualifications for candidates seeking election to the councils. Most of them were arbitrary and unreasonable. Their object was to place unnecessary restrictions on the choice of the electors and to exclude a number of men of light and leading in every province. In the Presidencies of Bombay, Bengal and Madras eligibility to the membership of a provincial council was confined to the members of Municipal and District Boards only. Besides, a property qualification had, for the first time, been laid down in the case of candidates for membership of Provincial Councils.‡

The disqualifications prescribed were also obnoxious. No person was eligible for election as a member of the council, if such a person (a) was not a British subject, or (b) was an official, or (c) was a female or (d) had been adjudged to be of unsound mind, or (e) was under 25 years of age, or (f) was an uncertified bankrupt, or (g) had been dismissed from the Government service, or (h) had been sentenced to imprisonment or transportation.§ The worst

*Srinivasan : *Democratic Government in India* pp. 40-41

†Banerjee A.C. : *Indian Constitutional Documents* Vol. II p. 271

‡No such qualification was required of Members of Parliament in England. Nor there existed any such condition prior to the Reforms of 1919.

§The Congressmen such as L. Lajpat Rai and Krishan Kumar Mitra were particularly insistent that deportees should not be disqualified. They argued that when Michael Davitt (once convicted of sedition) and John Burns (once sentenced to imprisonment) could become the members of the British Parliament and even ministers of the Cabinet rank, there existed no reason why Indian nationalist leaders, whom the Government had once deported should be prevented from becoming members of the Indian Councils. *The Bengallee*, February 28th, 1909.

part of the regulations was that they gave ample powers to the Government of India to disqualify any candidate, whom they thought undesirable, from standing for election. A number of eminent leaders were automatically disqualified, because they had been deported or had suffered imprisonment.

(h) Principle of Election along with Nomination

Much to their credit, the Morley-Minto reforms definitely accepted the principle of election. Elected element was introduced both in the Imperial and Provincial Councils. But, at the same time, the procedure of nomination was adopted to give representation to those interests, which were not likely to be adequately represented through election. The Government of India had absolutely free hand in such nominations, and no qualifications were specified in the Regulations made under the Act.

(i) No representation to certain parts of India

Some parts of British India, like the North-West Frontier Province, Coorg and Ajmer-Merwara, were under the direct administration of the Governor-General. They had very genuine claim for representation in the Imperial Council. Similarly, some tracts and districts, which were held on a permanent tenure with exclusive and plenary powers of administration vested in the British Government, were also entitled to be represented at the Council of the country. But the Morley-Minto reforms made no provision for such parts of India. The Indian leadership of the time regretted this injustice.

(j) Appointment of Indians to Executive Councils

The appointment of some Indians to the executive councils was another significant feature of the Morley-Minto reforms. Morley, the Secretary of State for India, had appointed two Indians, Mr. K. G. Gupta (a Hindu civilian) and Syed Hussain Bilgrammi (the Chief Adviser of the Nizam of Hyderabad), to his own Council (India Council) in August, 1907. Under the Morley-Minto scheme Mr. S. P. Sinha, the Advocate-General of Bengal, was appointed as Law Member of the Governor-General's Council. This appointment afforded ■ great satisfaction to the educated Indians. In the words of Mr. R. N. Mudholkar 'After Curzon's pronouncement in 1904 that the highest ranks of civil employment should generally be reserved for Englishmen...the admission of Indians direct into the Executive Government was very much like

the introduction of a new principle.' Mr. Sinha's work as Law member of the Council was very impressive. Lord Minto publicly thanked him for 'the absolute fairness and broad-minded patriotism', which had characterised any advice that Sinha had offered him. It was a clear testimony to the fact that Indians were competent enough to hold the highest offices in the Government.

The Muslim League did not feel happy over the appointment of Mr. Sinha. Their deputation waited upon the Secretary of State and requested him for the appointment of a Muslim to the Viceroy's Council. Mr. Morley was frank enough to tell the deputation that it was not a political concession; it was merely the recognition of merit, the fulfilment of the pledges given in 1833, and then in 1858. Hence, the request of the Muslim deputation was turned down by Mr. Morley.

The Presidency Councils (Bombay and Madras) were also enlarged. Their strength was raised from 2 to 4. At least one of them was to be an Indian. The Governor-General-in-Council were authorised to establish such executive councils in provinces ruled by the Lieutenant-Governors.

(k) Categorical rejection of Indians' demand for responsible Government

The Morley-Minto reforms, to the dismay of Indians, negatived the grant of responsible government to India. There was, however, nothing surprising in it. For, the Secretary of State, Mr. Morley was particularly anxious that no sapling of the parliamentary or responsible and representative Government should be sown in the soil of India. He had openly declared in the House of Lords in 1908: "If I were attempting to set up a parliamentary system in India, or if it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I, for one, would have nothing at all to do with it." Prof. C.H. Philips believes that Morley and Minto missed the best opportunity of introducing the English parliamentary system in India. They should have introduced the parliamentary system in 1909, for never again did more favourable conditions obtain*.

EVALUATION OF THE REFORMS

The Morley-Minto reforms were no doubt, a fairly liberal measure. They considerably enlarged the strength, powers and functions

of the Indian Councils. They could rightfully claim to be a marked improvement upon the previous measure (The Indian Councils Act, 1892). But, despite all this, they failed to satisfy the aspirations of the Indians. For, the intention of their authors and supporters was to make certain limited concessions to the Indian sentiment without, in any way, affecting the predominant position of the British rulers*. The reforms, therefore, met with ■ strong denunciation at the hands of the critics. Mr. P.E. Roberts described them 'only a half-way house.' The Montagu-Chelmsford Report condemned them as inadequate. Dr. Zacharias held the view that the reforms had given the people 'the shadow rather than substance.' As a matter of fact, the Rules and Regulations framed by the authorities under the Act were so long and intricate that they practically 'wrecked the Reform scheme.'

(a) They dealt a blow to the national unity

The Morley-Minto reforms, in the first instance, attempted to divide the people of India into watertight compartments. The authors of the constitution deliberately adopted the principle of setting up counterpoise of natives against natives, class against class and interest against interest, and thereby divided the Indians into small political camps arrayed against one another. "The principle of class representation" writes P.E. Roberts, "created a distinction between the different classes of the community and made the fusion of their interests impossible."† The history of later years conclusively proves that the formation of the councils, on the basis of representation to various classes, creeds and interests (Muslims, Land-holders, Mill-owners etc.) gave a direct encouragement to sectional interests. And this, in turn, had a disintegrating effect on the national solidarity.

Besides, after the grant of separate electorates to the Muslims, men tended to think not in terms of the nation, but of their separate creeds. The demands of the communities for separate electorates gradually increased. Some based their claim on backwardness, some on their advanced condition and some on their minority strength in a particular province. The result was that the Sikhs in the Punjab, the non-Brahmans in Madras, the Indian Christians and Anglo-Indians, etc. etc. all asked for separate representation. The nationalist leaders launched a vigorous

*Norman D Palmer : *The Indian Political system* P. 47

†Roberts P. E. : *British Dominion in India*

campaign to check this growing tendency of separatism but all in vain. On the contrary, the demand for communal electorates became more and more pronounced. The Government, in their effort to disintegrate the Indian unity, extended these concessions to many other communities viz. the Sikhs, Anglo-Indians, Indian Christians, Europeans etc. They even tried to drive a wedge between the Harijans and the Hindus. This naturally weakened the feeling of oneness among the Indians and dealt a severe blow to the spirit of nationalism.

(b) They sowed the seeds of the Partition of India

The introduction of separate electorates for the Muslims had an unfortunate and far-reaching effect on the destiny of India. As a result of this decision, about six million Muslims got separated from the rest of the Indians. They became more aware of their distinctiveness. They began to think themselves as Muslims rather than as Indians. Most of them gradually turned to the Muslim League and then started a struggle to promote their communal interests. Though their leaders, at times, made a call for national unity, yet they never gave up their communal aspirations. On the other hand, they became more and more communal in their outlook and politics. By the forties of this century, the Muslims under the League declared themselves as a separate nation and asked for a separate homeland in the Indian sub-continent. The British Government, in their own interest, lent all support to their demand till India was partitioned amidst scenes of bloodshed, civil war and disorder. According to Dr. Majumdar, "Morley and Minto both must share the blame for striking a fatal blow at the political unity of India, which was the greatest achievement of the British rule." But Prof. C.H. Philips believes that Morley and Minto had no such intention in their mind, nor was their recognition of separate electorates, in any way, a mischievous act.* This assertion of Mr. Philips, however, loses its weight when we learn from Lady Minto that her husband on the very day of the decision received a letter of congratulations from an official which said :

*Morley and Minto are often blamed for adopting the policy of 'divide and rule'. They were not unaware of the possible advantages of this course, but there is no evidence to suggest that they consciously sought it. Had they set themselves to introduce parliamentary government of the English kind into India, then their recognition of separate electorates would have been a mischievous act. *Philips C.H. : India P. 108.*

“A very big thing has happened to-day..... A work of statesmanship that will affect Indian history for many a long year”.

(c) *They did not make provision for the political education of the Indians*

The Morley-Minto reforms did not make provision for the political education of the Indians. On account of an extremely limited franchise ■ very negligible part of the people had the right to vote for the Councils*. Besides, the members of the Councils were to be returned by a system of indirect, rather doubly indirect election. The rate-paying citizens in a town or village cast their votes to elect their representatives in the municipal council or local board. The latter acted as voters for those who contested for Provincial Legislatures. The members elected for the Provincial Legislative Councils elected, in turn, representatives for the Imperial Legislative Council. Thus, there existed no direct relation between the rate-paying citizens and the members sitting in the Legislative Councils. The authors of the Joint Report (1918) particularly pointed out that ‘under this electoral system there is absolutely no relation between the supposed primary voter and the man who sits as his representative in the Legislative Council. As a consequence, the vote of the primary voter had no effect upon the proceedings of the legislatures and the representatives elected felt no sense of responsibility to those whom they represented. Besides, under these conditions there could be no political education of the people.

(d) *Unsound position of non-official members in the Councils*

A substantial official majority had been purposely retained in the Imperial Legislative Council. And it was hoped that the officials in the Council would be left free to vote on resolutions. But the subsequent experience turned out to be quite different. The official bloc became a government party under the rigid and tight control of the party whip. In consequence, the official members could not ask any question, nor could they move a resolution according to their own wishes. They could not even speak unless the official whip asked them to do so. According to K.V. Punnaiah, “Their main function (in the Council) was to vote, to vote, with the Government and to vote against the non-official

*The nine general constituencies which returned 13 representatives to the Imperial Council and were composed of the non-official members of the Provincial Councils did not have more than 200 voters.

opposition. However eloquent the non-official speakers might talk and, however, reasonable and weighty their arguments might be, when the time for voting came, the silent official phalanx stepped in and decided the matter against them*. Besides, there was no getting away from it (official bloc) and no way of getting it round or dividing it. Like the Chinese Wall, it acted as a permanent barrier between the Government and the non-official Indians, embittering their relations and causing endless irritation and annoyance. Even Moderates like Gokhale, who had hailed the Reforms in the first instance, complained 'that once the Government have made up their mind to adopt a particular course, nothing that the non-officials can say in the Council is practically of any avail in bringing about a change in that course'. Thus, the position of the non-official members in the Imperial Legislative Council was quite unsound and they exercised no influence on the decisions of the Government.

The non-official members in the Provincial Councils also, where they were in a majority, did not matter much. For, the powers of the Councils were very limited. The head of the Government of a province had the power to veto measures. Besides, the irregular attendance of the non-officials and the habitual voting of the European contingent and nominated non-officials with the Government reduced them (non-officials) to a minority. To make matters worse, even some non-officials also lent their support to the officials. To quote Sri Ram Sharma, "The elected European members were as good as officials. The landlords and the Muslims were admitted there for their services to the Empire, and they were bent upon improving the future of their own classes by proving their loyalty still further".† These unsatisfactory conditions rendered the non-official majorities in Provincial Councils ineffective for all practical purposes.

(e) *They failed to solve the Indian political problem*

They Morley-Minto reforms afforded no answer and could afford no answer to the Indian political problem. The people of our country clamoured for the grant of responsible government. They wanted to have an active hand in the framing of the government under which they were to live. They also asked for an effective share in the legislation and even in day-to-day administration. But, to their dismay, the Act did not make any transfer of

*Punniash K. V. *The Constitutional History of India* P. 305.

†Sharma Sri Ram. *A Constitutional History of India* P. 206.

power to the hands of the Indians. Lord Morley, the author of the Reforms, himself declared in clear and unequivocal terms that his Reforms had nothing to do with the introducing of parliamentary system in India. In May 1909, he again observed : 'Swaraj is an impossibility in our time and for generations'. Evidently, from the Indians' point of view the Reforms of 1909 were not inspiring. They did not fulfil their expectations and thus failed to afford an answer to their political problem.

The authorities were also disappointed with the results of the Reforms. Lord Minto's Government hoped that the Reforms would rally the aristocratic element and the Moderates on their side, thus enabling them to check any further shifting of the balance of power (in favour of the Extremists) and any attempt to democratize Indian institutions. Lord Morley also believed that the best way to draw out the teeth of the Extremists was to win the support of the Moderate party by granting a real measure of reform. But they soon discovered that the results had fallen short of their expectations. Even the Moderates, who had hailed the Reforms in the beginning, were not satisfied with the new constitution. For, the working of the Reforms evinced that the sacred heart of the Reforms was nothing but benevolent despotism and the Indians had received £ 1 for a cheque of £ 1,000.

(f) They smacked of distrust of educated middle class

The Government of India was distrustful of the educated middle class. It looked upon them as seditious and disloyal. Many English officials of the high ranks including I. D. Rees, Col. Grey and F. H. Barrow had openly warned the authorities against transferring any power to them. The Government of India, therefore, wanted to keep them away from the councils as far as possible. It was also their effort to set up a counterpoise to them in the councils. Hence, under this Reform scheme, the territorial constituencies were deliberately avoided ; separate electorates and weightage were granted to the Muhammadans, and the landlords were given excessive representation in the councils. Even the leading Anglo-Indian daily of Calcutta (*The Statesmen*) admitted that 'the scheme amounted to little else than provision for including in the Legislative Councils more landowners and more Muhammadans'. The Congress men objected to the excessive representation that was granted to the landholders. But the authorities, who found them most loyal to the British rule, brushed aside their objections, and extended their patronage to

this extremely conservative but loyal section of the Indian social order.

(g) *They marked a stage in the evolution of Parliamentary institutions*

In spite of Lord Morley's disclaimer that the new councils, in no way, meant the introduction of parliamentary government, his Reforms constituted a clear step towards representative and responsible government. In the words of Prof. Spear they 'committed India to democracy'.* The Reforms definitely adorned the councils with all the external paraphernalia of a parliamentary government. According to R.N. Mudholkar they were even in 1909 'parliaments, in embryo. The only thing they lacked was responsibility'. And this, in view of the fast developing Indian nationalism, too could not be delayed for long. After the non-officials were admitted into the councils, they started their efforts to secure their (councils') full growth. Only ten years later they obtained a substantial instalment of responsible government in nine provinces. The next instalment came in 1935. Thus, Morley's Reforms, despite his denials and disavowals, put India on the road to self-government. Surendranath Banerjee rightly claimed that Morley would stand forth in the history as the Simon de Montford of the future parliament of India. Prof. C.H. Philips's observation in this context is also worth quoting. He writes : "Just as the East India Company had over-run India whilst condemning schemes of conquest, so also the British Government took Indians towards a kind of parliamentary government while disavowing the possibility."†

(h) *They admitted the Indians to the most secret counsels of the Government*

The appointment of the Indians directly to the Secretary of State's Council in London and also to the Governor-General's Executive Council was no mean a concession. King Edward VII, Mr. Austen Chamberlain, Lord Curzon and MacDonald were strongly opposed to the admission of Indians to the secret counsels of the Government. The King held the view that such appointments 'were fraught with the greatest danger to the maintenance

*Taken as a whole, the Act was a clear step towards a responsible government. Morley denied any such intention, partly, perhaps, through sheer short-sightedness and partly to allay the fears of the British opposition. Spear : *A History of India*, P 179.

†Philips C.H. : *India* P. 109.

of Indian Empire under the British rule'. Mr. Austen Chamberlain opposed it out of racial prejudices. He said, 'We could not admit equality'. But Morley, to the credit of his ability and liberalism, prevailed upon the opposition and gave the Indians a direct share in Government decisions at the highest level.

(i) They provided opportunities for training to the Indian politicians

The Morley-Minto Reforms, it is true, did not provide necessary conditions for the political education of the people. But they definitely offered ample opportunities for training to the Indian politicians and officials. It is, indeed, creditable that our representatives in the councils gave an admirable proof of their skill and capacity for debate and also for presenting their case. They conclusively proved that Indians could make a positive and constructive contribution to the Indian administration, if an opportunity for the purpose was offered to them. In spite of their disadvantageous position, the non-official members did exercise some influence on the course of administration. The questions they asked introduced a new spirit of self-criticism.

(j) Failure of the Reforms (Causes)

The legislative councils constituted under the Minto-Morley Reforms started functioning in 1910. Before a year was over, the earlier enthusiasm of even Moderates cooled down. According to the Montagu-Chelmsford Report the reforms spent up their utility by 1918 and were no longer acceptable to the Indian opinion. This unhappy end of the reforms was, no doubt, primarily due to their inherent shortcomings, yet some other factors also contributed to their failure.

In the first place, the Provincial Councils did not have sufficient powers in the sphere of administration. Its virtual control remained with the Central Government. The Provincial Councils as such could not prove themselves sufficiently useful. Secondly, though the Indians were appointed to the Executive Councils, there was no corresponding wide-spread admission of the Indians into the public services. Higher posts remained the exclusive privilege of the Britishers. Thirdly, there was no general improvement in the local bodies. They remained officialised as before. Fourthly, the humiliating inequalities, to which the Indians were subjected on the racial grounds, kept them discontented with the Government. It is said that even in their own country they were not allowed to enter

many places as guests. During his visit to India, Mr. Montagu, the then Secretary of State, was surprised to know that he could not take his Indian members to certain clubs here. Fifthly, the rapid rise of the national consciousness and the Indians' desire for political power also rendered the Reforms unsatisfactory and useless.

FURTHER READING

1. *A.C. Banerjee* : Indian Constitutional Documents Vol. II
2. *R.C. Majumdar* : Struggle for freedom
3. *A.K. Majumdar* : Advent of Independence
4. *L.S. Amery* : India and Freedom
5. *Lady Minto* : India, Minto and Morley
6. *Sankar-Ghose* : The Western Impact of Indian Politics
7. *Ronaldshay* : The Life of Lord Curzon
8. *Alfred Layall* : The Rise and Expansion of British Dominion in India
9. *P.E. Roberts* : British Dominion in India
10. *Morley's* : Recollections Vol. II
11. *Morley's* : Indian Speeches
12. *Zacharias* : Renascent India
13. *R. Coupland* : The Constitutional Problem in India
14. *A.B. Keith* : A Constitutional History of India
15. *C.H. Philips* : India
16. *S.R. Wasti* : Lord Minto and the Indian nationalist movement.
17. *G.P. Pradhan* : B.G. Tilak
18. *Ram Gopal* : Indian Muslims—A Political History
19. *K.K. Aziz* : Britain & Muslim India
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21. *Sir C. Lucas* : The Empire at War, Vol. V,
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CHAPTER 10

Montagu-Chelmsford Reforms and The Government of India Act, 1919

The Montagu-Chelmsford Reforms, which came only a decade after the Morley-Minto Reforms, embodied a constitutional scheme of much greater importance. They caused the first break in the old citadel of bureaucratic rule, and also made a real beginning in representative government. Besides, they initiated the series of constitutional changes, which led to the emergence of India as an independent nation.

SECTION—I

CIRCUMSTANCES LEADING TO THE REFORMS OF 1919

The years immediately preceding the Montford Reforms were of unusual excitement. They were marked by an unprecedented national unity and agitation. The Hindus and the Muslims, the League and the Congress, were one in their demand for constitutional concessions. The First World War and India's war efforts had sufficiently strengthened their claim for self-government. The British authorities, sensing the spirit of the time, conceded in the Montford Reforms another instalment. The main factors and forces responsible for this grant of reforms to the Indians may be summed up as follows :—

Dissatisfaction with the Reforms of 1909

The Morley-Minto Reforms, though hailed by the Moderates in 1908, were never acceptable to the Indian opinion. The rules and regulations framed under the Act were so intricate and lengthy that they practically wrecked the Reform scheme. To quote Dr. Zacharias : "The essence of those reforms lay in conceding what at once was evacuated of all meaning. The effective principle of democracy was adopted, yet, at the same time, the anti-democratic representation was added. The official majority was done away with, but the elected members remained in minority. The membership was considerably enlarged; but a disclaimer was issued simultaneously that the new councils in no way meant the introduction of parliamentary system."* Evidently, such a constitution could not satisfy the Indians, who had held since 1906 *Swaraj* or self-government as the goal of their political aspirations.

British policy of Repression

Much to the annoyance of the Indian nationalists, the bureaucracy in India adhered to its policy of repression. The Prevention of Seditious Meetings Act, 1907 was gradually placed on a permanent basis. The Indian Press Act, 1910 and the Criminal Law (Amendment) Act, 1913 were enacted in the teeth of strong opposition of the non-official members in the Imperial Legislative Council. These measures of a strongly repressive nature were bitterly resented by the Indian people. For, the situation, as was admitted even by the Governor-General and his officials, had ceased to be dangerous. Apart from that, these measures were bound to have a stifling effect on the public life.

This policy of repression weakened, for a time, the growing strength of the national forces. In Bengal, where agitation was most intense and where repression was also at its height, the popular movement went underground. Elsewhere also, the national organisation withered for want of proper inspiration. Bal Gangadhar Tilak was in prison at Mandalay; Babu Arbind Ghose was in voluntary exile; the Moderates and the Muslims were busy in working the Morley-Minto Reforms. All this brought the political life of India to a stand-still. But soon the events at home and abroad so combined as to revive the political life in India with a greater vigour.

*Zacharias : *Renascent India* P. 216.

Change in the ideal and policy of the Muslim League

The Morley-Minto Reforms had conceded to the Muslims practically all that they had demanded. The Muslim League had, therefore, welcomed the said reforms, and had also affirmed its faith in the Anglo-Muslim friendship. This new political alliance had, of course, created a gulf between the Hindus and the Muslims. But events soon happened both in India and far outside, which brought a complete change in the trend of Indian politics. They alienated the Muslims from the British and drew them closer to the Hindus.

The undoing of the Partition of Bengal in 1911 and the consequent reunion of the two halves of the Province (after a span of six years) gave the first rude shock to the Indian Muslims. They looked upon it as a breach of faith on the part of the British rulers. It was openly alleged that the annulment was a concession to the Hindus' terrorism and a disfavour to the Muslims for their loyal co-operation. The unfriendly policy of England towards Egypt, Morocco and Persia brought further deterioration in the Anglo-Muslim relations. They found in it a concerted British plot to destroy Islam as a temporal as well as spiritual power. This apprehension of theirs was soon confirmed by the British hostility towards Turkey in the Turko-Italian War of 1911 and again in the Balkan War of 1912. The Muslims in India were greatly frustrated.

The sympathies of the Congressmen for Turkey at this time captured the imagination of the Muslims, and the inspiring calls of the Muslim nationalists, like Abul Kalam Azad and Maulana Mohammed Ali revived their faith in the Hindu-Muslim unity. The need for rapprochement was also emphasised by younger generations of the educated Muslims, who were greatly influenced by the success of the nationalist movements in the Islamic countries. The League constitution was consequently amended at its annual session of March, 1913. It adopted the Congress ideal of self-government under the British Crown and sought to achieve it by promoting national unity. The change in the ideal and policy of the League was warmly welcomed by the Indian National Congress as it facilitated the political advance of the country. Thus, the League and the Congress came sufficiently close before the outbreak of the first World War in 1914.

World War I and Indian politics

The outbreak of the World War I had great repercussions upon Indian politics. It also obliged the British to survey the Indian problem from a new angle of vision.* India, in spite of her dissatisfaction with the bureaucracy, rendered meritorious services to the British Crown. She made a huge contribution in men, money and munition. About one million Indians went overseas to fight for their British masters. They shed their blood in the distant lands viz. Palestine, France, Belgium, East Africa, Persia, Sudan and Egypt to save the British Empire. They also withstood the biting winter of Flanders and suffered the muddle and misery of the Mesopotamian campaign. The cheerfulness, the loyalty, the good discipline and intrepid courage displayed by the Indians in the overseas expeditions impressed even men like Lord Curzon.

Money was also flown as freely as men. The Indian Legislature voted £ 100 million to meet the war-expenses. Over £ 140 millions were raised in the shape of war-funds and war loans. The Indian Government also bore the burden of Indian troops fighting overseas. This cost varied between 20 and 30 millions. Besides, the huge gifts and large subscriptions were made by the wealthy people and princes of India. In short, the contribution of India to the ultimate victory of the British was beyond expectations and in excess of her resources. The Indians claimed credit for the war efforts of India and made her services and sacrifices a basis for their demand of more concessions. The British statesmen (including Sir Austen Chamberlain, Mr. Asquith and Birkenhead), on the other hand, expressed their gratitude to India for her magnificent assistance. They also thought it politic to concede to her claims. Thus, the war-efforts of India, whether made voluntarily or otherwise paved a way for her constitutional advancement.†

In another way also, the War gave strength to the Indian claims and aspirations. The solemn declarations of the British

*"Impact of War on Indian problem not only forced British statesmen to look at it from a new angle of vision but also to take at last a definite decision as to how it should be dealt with, and that not as a short-range but as a long-range plan." *Coupland R. : The Constitutional Problem in India* P. 51.

†*Dr. R. C. Majumdar* is of the view that there was little justification for the Indian claims. For whatever India had done she did at the bidding of her masters. The people and the politicians had no power to stop the flow of men, money and material. The British statesmen conceded the Indian demands in order to maintain their frequently expressed views about the voluntary nature of the Indian War effort. *Struggle For Freedom* P. 186.

statesmen that War was being fought for democracy and freedom did not fall flat on the Indian political leaders. They found in them a new dose of inspiration. Besides, the principle of self-determination for all people, as proclaimed by President Wilson in his 'Fourteen Points', had a direct bearing on the Indian problem. It gave a new force and vitality to the Indians' demand for self-government. If war was being fought to make the world safe for democracy, it was reasonably hoped, it would at least put India on the road to self-government. If self-determination was to be applied to the politically dormant Arabs in the Turkish Empire, it was asserted, it should be applied to the Indians as well.* In short, influenced by the liberal declarations of the British statesmen, the educated Indians, at least, developed a strong feeling that their masters had no moral justification, whatsoever, to deny them the right, for which they were fighting in Europe. Hence, recognition of the right of India to self-government and self-determination became the political objective of the Indian aspirations. According to Coupland, 'Since we were fighting to defend the two-fold cause of national freedom and democracy from the unprovoked assault of German militarism, some new response seemed needed to the appeals of the Indian nationalists, and by 1916 the Government of India had begun to press the British Government, despite the urgent pre-occupation of the war, to consider yet another advance in Indian polity†.

The War developed among Indians 'a new sense of self-esteem'. For, on many a field of Europe the Indian troops won distinctions as well as honour. On more than one occasion they excelled the forces of the self-governing colonies of the Commonwealth in respect of fighting skill and heroism. The British statesmen freely referred to their greatness as fighters. Naturally enough, the Indians gained this confidence that they were, in no way, inferior to other nations, nor had their country fallen behind any other part of the British Empire. This made them claim equality of treatment with the people living in the other dominions and thus strengthened their claim for self-government.

*Sharma Sri Ram : *A Constitutional History of India*, P. 210.

†For essential features of the scheme see Majumdar's : *Struggle For Freedom*.

Revolutionary activities of the Indians at home and abroad

The outbreak of War was hailed by the revolutionaries in India and abroad. They saw in it a heaven-sent opportunity to exterminate the British rule from India. The revolutionaries in Germany and the United States became particularly active. Their Berlin Committee and Ghadar Party made a plan to send arms and men to India for a country-wide revolution. Some Indian revolutionaries joined a German and Turkish mission at Kabul in a plot to overthrow the Indian Government. These influences from abroad, allied with the native discontent, soon let loose the forces of disorder. An era of anarchical crimes ensued and the revolutionary movement assumed alarming proportion. The year 1915 was the blackest year, for it saw horrible dacoites and sensational murders in Bengal and in the Panjab. Though Government curbed the revolutionary activities with a long arm of repression, yet the political unrest was not without its effect. It emphasised the urgency of the Indian problem and facilitated the task of gaining political objective. It was admitted even by many Europeans of the time (including W.S. Blunt and Mrs. Annie Besant) that the terrorism of these years proved a very effective method for, it convinced 'the selfish rulers that selfishness had its limits of imprudence.'

Alliance between the Congress and the League (Lucknow Pact, 1916)

The change in the ideal and policy of the Muslim League in 1913 had brought it sufficiently close to the Congress. The subsequent arrests of the Muslim nationalists (Muhammed Ali, Shauket Ali, Maulana Azad) gave an added incentive for closer understanding. The bond of alliance between the two parties was further cemented by their holding of the annual sessions simultaneously at Bombay in 1915. It was felt by the leaders of both the organisations that their unity could ensure a large share of self-government in the war years. Convinced as such, some prominent Congress leaders viz. Mahatma Gandhi, Sarojini Naidu, Pandit Madan Mohan Malaviya attended the League session. They, no doubt, received a grand ovation. In this atmosphere of communal harmony and co-operation, a committee to prepare a scheme for India in consultation with the Congress was appointed. This committee submitted its scheme at the joint session of the League and the Congress at Lucknow in 1916. It provided the basis for what is known as the Lucknow Pact of 1916.

The Lucknow Pact was an agreement of great political importance. In the words of Prof. Coupland it was 'the most striking expression of Indian nationalism so far achieved within the bounds of British India'. Mr. Muhammed Ali Jinnah (who was at that time the ambassador of Hindu-Muslim unity and later on became the 'Father of Pakistan') acclaimed the 'Lucknow Pact' as leading to a new India. The essence of the Pact was : (i) the Congress acceptance of separate Muslim electorates with weightage to the minority provinces in return for (ii) League's support for Congress objective of parliamentary government and Dominion Status. Though the Congress paid a very heavy price to secure this political unity, yet it definitely provided the Indians with a united political front to bring more pressure upon the Government. According to Dr. R.C. Majumdar the Government of India was greatly surprised at this development, for the Pact seemed to deprive them of the one trump card they held in their hands to stem the tide of Indian nationalism.*

Reunion of the Moderates and the Extremists

The nationalist leaders not only brought about a political unity between the League and the Congress, they also achieved the reunion of the two wings of the Congress. Ever since the split of Surat in 1907, the desire to reunite the Moderates and Extremists had always been present in the country. Sir William Wedderburn and some Indian nationalists had made genuine efforts in that direction, but had failed to achieve any result. Lokmanya Tilak's release at the outbreak of war revived the hope of a compromise. Mrs. Annie Besant and Mr. Subba Rao took up the matter in right earnest. The deaths of Feroze Shah Mehta and Gopal Krishan Gokhale (1915), who were opposed to the union, brightened the prospects. Hence, at the Congress session of Lucknow in 1916, the gulf between the two wings was bridged. This reunion of the Moderates and the Extremists, after about nine years, further steeled the national unity which was, obviously, a promise for the future.

Home Rule Movement

Another event of even greater political significance that enthused the Indian masses in those fateful years was the Home Rule Movement. In 1916, Mrs. Annie Besant and Lokamanya Tilak started their Home Rule Leagues and then electrified India

*Majumdar R.C. : *Struggle For Freedom* P. 326.

by launching Home Rule movement. The main demand of this movement was that the rule of bureaucracy be replaced by an administration responsible to the people. The untiring efforts of its vigorous leaders soon spread the movement far and wide and about 14,000 persons joined Tilak's League within a year. Mrs. Annie Besant's superb oratory particularly played a significant role in making the movement popular. The Government took various measures to check the spread and strength of the Home Rule movement, but could not achieve any success. Rather, the internment of Besant in June 1917 made the Home Rule movement more popular. It also provoked a strong criticism from foreign countries including Britain. In short, the Home Rule movement placed a concrete scheme of self-government before the Indians, secured for it the sympathy and support of some foreign politicians and gave a new force to the national agitation. According to Dr. R.C. Majumdar the rapid success of the Home Rule movement made the Home Member nervous and turned the Government in favour of giving self-government.

Mesopotamian Muddle

When the political agitation in India had reached the highest point, the report of Mesopotamian Commission was published. It cast a baleful light upon the mismanagement, stupidity and incompetence of the military authorities entrusted with the organisation of the expedition. It also condemned the Indian administration and held it responsible for the disaster that overtook the campaign. Mr. Montagu, an ex-Under-Secretary of State for India, in his speech on the Mesopotamian Commission Report described the Government of India as 'too wooden, too iron and too inelastic'...to be of any use for the modern purposes.' He also emphasised the need of some substantial reforms in it. Besides, he supported the Indian demand for an immediate declaration of British policy.' He said, "If you want to use loyalty (of the Indian people), you must give them that higher opportunity of controlling their own destinies, not merely by councils, which cannot act, but by control, by growing control of the executive itself. Unless you are prepared to remodel this century-old and cumbrous machine...you will lose your right to control the destinies of the Indian Empire'. This speech of Mr. Montagu pushed forward the Home Rule movement and also led to the resignation of Mr. Austen Chamberlain, the then Secretary of State for India.

Montagu Declaration August 20, 1917

The situation created by the intense agitation and the fall of Mr. Chamberlain led to a good deal of re-thinking and revaluation of old policies. Mr. Edwin Montagu, the new Secretary of State for India, then made the historic declaration of the British intention to institute another series of constitutional concessions. On August 20, 1917, he declared : "*The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to progressive realisation of Responsible Government in India as an integral part of the British Empire*". He, however, added that the progress in that direction could be made only by successive stages and that the Government alone must be the judge of the time and measure of each advance.

Montford Scheme

On November 10, 1917, Mr. E.S. Montagu, the Secretary of State, arrived in India with a view to draw up a same scheme of reforms necessitated for the implementation of the Declaration. Along with Lord Chelmsford, the then Governor-General, he held deliberations with the top-ranking leaders of the Congress and the League. He also consulted the bureaucracy. Thereafter, in consultation with the Viceroy and a small Committee (consisting of Sir William Duke, Lord of Donoughmore, Bhupendranath Basu and Charles Roberts) he published a report known as Montford scheme. The scheme proposed (a) popular control over local bodies, (b) partial responsibility or dyarchy in the Provinces, (c) increased opportunities of influencing government without any responsibility, (d) relaxation of the control of the Secretary of State over the Government of India and the Provincial Governments in proportion to the changes, which were to take place under the scheme. On the basis of the principles laid down by the scheme a Government of India Bill was introduced which became the Government of India Act, 1919.

SECTION II

MONTAGU DECLARATION

(August 20, 1917)

The Montagu Declaration of August, 1917 is a great landmark in the history of India. Mr. Montagu, its author, himself described it

as 'the most momentous utterance ever made in India's chequered history'. Besides, he had to put in extra-ordinary efforts in preparing its draft. As Lord Curzon stated in the Parliament, "more time and energy were devoted to the drafting of the announcement than perhaps to any other document, including the Queen's Proclamation of 1858.

Why did the British Government make this declaration ?

The British statesmen tried to give the impression that the Montagu Declaration was the outcome of their benevolent intentions. It was also their effort to present it as something, which had flowed out of their strong sense of obligation. But the modern critics do not find much weight in their professions or contentions. For, the British politicians at the helm of affairs were not the persons to grant us concessions out of purely benevolent motives. Had they been a little considerate to the Indian aspirations, they would have neither doubted the success of responsible government in India nor purposely delayed its introduction. As a matter of fact, the situation in India by 1917 became so unique that it made it imperative for the British authorities to issue an immediate and definite statement of their policy towards the Indian problem. In the years preceding Montagu's declaration, a great many events of political significance had occurred in India. At the historic Lucknow Session of 1916 the Moderates and the Extremists had been reunited ; the rapprochement between the Hindus and the Muslims had been secured, and the Home Rule Leagues had galvanised the Indians into a political action. To quote Dr. Majumdar : 'The game of playing the Muslims against the Hindus and of rallying the Moderates against the Extremists had failed and political India was united as never before. The Home Rule movement had deeply stirred the people, such as witnessed only in Bengal during the Swadeshi movement.' Besides the national solidarity of these momentous years, the political agitation had assumed a more constructive form, concentrating on exacting the maximum concessions. There was also a spirit of open defiance against the Government. The terroristic activities of the Indian revolutionaries had extended beyond the Indian borders. The repressive measures of the Government had miserably failed. To make matters worse, the war situation in Europe was steadily going against the British.

In the face of this difficulty as well as unprecedented situation,

Mr. Chamberlain, the Secretary of State, held deliberations with the War Cabinet and prepared a scheme to meet the Indians' political aspirations. But, unfortunately, the Mesopotamian Muddle brought about his fall, and Mr. Edwin Montagu occupied his office. The new Secretary of State brought no substantial change in the draft left by his predecessor. But by an irony of fate "this draft was finally recast by Lord Curzon, who in his anxiety to avoid the word self-government put the word 'responsible government' and thereafter persistently refused to understand the implications involved in his own insertion." If Lord Curzon did not understand that responsible government essentially implied parliamentary government,' writes A.B. Keith, 'his ignorance was surprising'. The declaration, as finally framed and announced by Mr. Montagu on August 20, 1917 in the House of Commons, ran as follows :

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to the progressive realisation of Responsible Government in India as an integral part of the British Empire. I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of Indian people, must be the judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred, and by the extent to which it is found that confidence could be reposed in their sense of responsibility."

There was nothing new in the first part of the two-fold policy set out in this historic announcement. The appointment of Indians to the official posts had been fore-shadowed as early as 1833. The novelty of the announcement, however, lay in the second part of it, which enunciated the following four principles for future guidance :—

(a) The self-government within the British Empire was the goal of the British rule in India.

(b) The progress in that direction could be made by successive stages.

(c) The British Parliament and the Government of India alone were to be 'the judges of the time and measure of each advance.'

(d) They were, however, to be guided by the performance of the Indians entrusted with responsibility of running the Government.

SIGNIFICANCE OF THE DECLARATION

Montagu Declaration of August, 1917 was a document of no ordinary importance. The Moderate party welcomed it as 'The Magna Carta of India'. It embodied the most momentous announcement of British policy towards India and her constitutional problem. According to Bipin Chandra Pal, the August Declaration was, in a way, more significant than even the Queen's Proclamation of 1858. The British Government through the Proclamation had promised good government, but the August Declaration held forth the promise of responsible government. Besides, with it began the policy, which Britain could claim credit for having followed consistently and faithfully right up to the eventual transfer of power*. It would not be out of place to mention here that the Queen's Proclamation remained the basis of British policy till 1917, while this historic declaration served as the basis of British rule in India till her independence in 1947.

It was a revolutionary declaration

The declaration, according to R. Coupland, was a revolutionary announcement in so far as it promised to establish responsible government in India. Mr. Morley, the Secretary of State for India had emphatically declared in the House of Commons in 1908 that he had absolutely no intention of introducing a parliamentary government in India...and the possibility of India's reaching the status of a self-governing colony was a mere dream. He had again declared in May, 1909 that 'Swaraj is an impossibility in our time and for generations'. His successor Lord Crew in his statement of 1912 had also asserted that he saw no future for India on the lines of colonial self-government. But hardly had half a decade yet elapsed, when another Secretary of State, Mr. Montagu, reversed the policy of British Government by declaring in equally emphatic terms that the establishment of responsible government in India was the ultimate object of British rule in India. All doubts about the intention of the British Government were subsequently removed by the joint declaration of Mr. Lloyd George (the Prime Minister) and Mr. Bonar Law (the leader of the Conservative Party), which stated :

*Lumby E.W.R. : *The Transfer of Power to India* P. 12.

“The Cabinet has already defined in unmistakable language the goal of British policy in India to be the development of responsible government by gradual stages. To the general terms of that declaration we adhere and propose to give effect”.

It placed India on the road leading to her independence

The inclusion of the term ‘responsible government’ in the Declaration of August, 1917 was quite significant. It irrevocably committed Britain to concede to India the same form of government as existed in the self-governing dominions. To put in other words, the declaration envisaged internal self-government of the kind then enjoyed by the dominions of New-Zealand, South Africa, Australia and Canada. It, thereby, set the pattern of political development, which ultimately led to the emergence of independent India within the next thirty years.

About two years after this historic declaration, the Indians were granted the first instalment of responsible government. Their subsequent efforts brought them the second instalment by 1935. The circumstances, thereafter, took such a fateful turn that the British had to concede the third and final instalment to India in the form of complete independence in 1947.

It gave a great moral strength to the Indian National Congress.

The Declaration gave a great moral strength to the Indian National Congress. For, the ideal of self-government, which the Congress had cherished since long and which had seemed, to many, as a mere phantom, had now come within the range of political realisation. Besides, the situation, in which the Government had been placed as a result of the Declaration, was quite encouraging. Once the Government had committed itself to a particular course of action, once it had declared the ultimate goal of its policy... It could not back out of its commitment. The Congress took full advantage of the situation and started its campaign for the implementation of the Declaration. Since there was nothing unreasonable in this demand of the Congress, the people extended to it their full co-operation. All this not only strengthened the position of the Indian National Congress but also ensured the success of its agitation.

It was the first great achievement of national unity

Montagu Declaration was the first great achievement of Hindu-Muslim unity. After the Congress and the League had

offered a united front to the Government, it was left with no alternative but the announcement of its policy. Though the British statesmen said that the Declaration was ■ reward to India for her magnificent war services, yet in reality it was ■ surrender to unprecedented national unity. This achievement gave a great confidence to the Indians in general and the extremists in particular. The latter were spurred to greater activity.

It opened a new chapter in the constitutional history of India

According to Prof. Sri Ram Sharma, "The Declaration closed one chapter in the constitutional history of India and opened another. Benevolent despotism was now dead and gone. It was out of date in Indian administration...India's right to Swaraj was admitted and despotism was to give place to constitutional government. It was true that the pace of progress was to depend on the success of the steps taken, yet the Indians had no doubts in their minds about their capacity to work representative institutions. So, all its *is* and *buts* were ignored and the announcement was welcomed by almost all political parties."*

It eased the political situation in India

It may also be argued in favour of the Declaration that it considerably eased the political situation. In the years preceding the Declaration, there was uncommon excitement and agitation. The whole country was seething with discontent and disaffection. The policy of repression had proved a failure and the Government was faced with a tense political situation. It seemed difficult for the Government to cope with the national awakening. The fortunes of war were steadily going against the British. Mr. Montagu's announcement of British policy changed the whole atmosphere. Lured by the promise of responsible government in the near future, the Indians became quiet. This gave ■ great relief to the British in the critical war years.

It was not free from defects

Though the Congress expressed its grateful satisfaction over the historic declaration, yet the announcement was not completely free from defects. The indefiniteness as to whether and when the final stage would be reached was a great damper on the spirit of the Indians. But the only consolation that a tangible measure of self-government would be introduced in the near future kept them

*Sharma Sri Ram : *A Constitutional History of India* P. 154.

quiet. Nevertheless, the Congress in its session of 1917 put forth the demand that the British Parliament should fix an early and definite time-limit within which full responsible government would be introduced.

The Declaration, according to Coupland, was based on the idea that 'liberty alone fits men for liberty'. But the machinery devised in accordance with 'this belief in the philosophy of liberalism' was hardly calculated to pave the way to liberty. Besides, according to the August Declaration, the British Government and the Government of India were to remain the judges of the time and measure of each constitutional advance. This condition implied a limitation on the Indians' right of self-determination. If, ultimately, the Indians were to be their own masters, then there remained no justification for imposing any such condition.

Finally, it was almost inevitable that the British rulers and Indian nationalists would differ on the question as to the time and measure of each constitutional advance. And the nationalists, such as Tilak, were sure to claim for themselves the right to decide that question. It, obviously, meant that the Declaration embodied in itself the seeds both of future conflict and constitutional development.

SECTION III

THE GOVERNMENT OF INDIA ACT, 1919

(Its Principal Features)

The Government of India Act, 1919 was the first step towards the implementation of Montagu Declaration. It introduced fundamental and far reaching changes in the sphere of provincial administration. Compared with these, the changes made in other levels of the Government were less striking. Nevertheless, it would be convenient to describe these changes from the highest stage downwards.

Preamble

The Preamble to the Act of 1919 defined the objects and scope of the new constitution. It gave a legal sanction to the policy of the Government as pronounced in the Montagu Declaration. It also asserted the sovereignty of the British Parliament. But the Preamble, as such, could not satisfy the politically conscious

Indians. For, it neither recognized their inherent right to responsible government nor of India to be treated as a free and equal partner of the British Empire. On the other hand, it provided for (a) the increasing association of Indians in every branch of Indian administration, (b) the gradual development of self-governing institutions and (c) the progressive realisation of responsible government in British India as an integral part of the Empire. Compared with the political demands of the Indians, these were very 'timid and halting concessions'. The nationalist leaders like C. R. Das were particularly opposed to that part of the Preamble, which emphatically asserted the right of Parliament to determine the time and manner of each advance pertaining to India's constitutional progress. By implication it meant that the British Parliament had the sole right to impose whatever constitution it might deem fit or necessary on the people of India. Mr. Das read in it a great insult of the Indians. He also felt that the object of this part of the Preamble was to perpetuate the domination of the British Parliament.* It was also a matter of annoyance that the Indians were to satisfy the British Parliament by their performance before making a demand for further instalment. It meant that the Indians were perpetual infants, and the British Parliament was their sole guardian.

Division of the Subjects

The Government of India Act, 1919 aimed at the introduction of partial responsible government in some of the Provinces of British India. This necessitated the demarcation of the sphere of the provincial governments, and the consequent division of the subjects between the Provinces and the Centre. Therefore, as in the Canadian Constitution, two lists of the subjects viz. Central and Provincial lists, were drawn up. The subjects, which concerned the whole of India or more than one Province and necessitated uniformity in legislation, were placed in the Central list. They were 47 in number and included Defence, Foreign and Political Relations, Public Debt, Customs, Posts and Telegraphs, Currency,

*"I, for one, am not prepared to submit to the insult offered to India in this part of the 'Preamble' and I feel bound to protest against it. We are quite prepared to undertake the responsibility for the welfare and advancement of the Indian people. I do not think if a foreign Parliament can possibly, discharge its responsibilities in relation to a subject nation."

Communications etc. etc. The Provincial list contained 51 subjects including Local Self-Government, Public Health, Sanitation, Education, Public Works, Irrigation, Agriculture etc. etc.

The Provincial subjects were further split up into two parts, viz., "Reserved subjects" and "Transferred subjects". Land Revenue, Famine relief, Irrigation, Law and Order, Industrial matters, Control of Newspapers etc. were kept as Reserved subjects, while Local Self-Government, Public Health, Sanitation, Education (*i.e.* all concerned with nation-building activities) were included in the "Transferred subjects". The Reserved subjects were to be administered by the Governor and his Councillors, while the Transferred ones were to be controlled by the Governor acting with the Ministers. 'It was through this scheme of transferred subjects administered by Ministers,' writes Dr. Ishwari Prasad, 'that first step towards the self-government was envisaged by the authors of the Act'.

In order to minimise central control over provincial contributions, the Act made a complete separation of the central and provincial sources of revenues. According to this arrangement, land revenue, excise, irrigation and stamps were made exclusively Provincial items. The receipts accruing in respect of these were to remain with the Provinces. Though nothing was specifically stated about the revenue sources of the Centre, yet it was understood that the income from customs, income-tax, salt, opium, railways, post and telegraphs, currency and coinage was to be the exclusive concern of the Centre. To compensate the loss of the Centre (resultant from this new arrangement) the Provinces were to make contributions to the Central Government. The Provinces were also given some more taxation powers.

I—CHANGES IN THE HOME GOVERNMENT

The autocratic interference of the Secretary of State in matters of purely Indian concern had considerably agitated the people of India. They were no less disgusted with the superfluity of his India Council. Besides, the reforms envisaged by this Act in the administrative set-up of Indian Provinces also called for changes in the Home Government. Hence, on the basis of the recommendations of Lord Crew, who was appointed to examine and report on the subject, the following changes were introduced in the existing set-up :—

(a) *Relaxation of the control of Secretary of State*

1. The powers of the Secretary of State with regard to his control over the Government of India were sufficiently reduced. Many of his powers were now delegated to the Governor-General-in-Council. The number of matters in which reference to the Secretary of State was essential was also cut down. Prior to 1919, all projects of legislation had to be referred to the Secretary of State before they were introduced in any of the Central or Provincial Legislatures. But, henceforth, only a few special Bills (relating to foreign relations, military affairs, customs, currency, public debts) were to be sent to the Secretary of State by the Imperial Legislature. The Provincial Legislatures were to refer their bills very rarely to him. The control of the Secretary of State over provincial finance was also relaxed.

2. The Act also provided that the salary of the Secretary of State, instead of being paid out of the revenues of India, was to be paid out of money voted and provided by the British Parliament. This was a change of great constitutional importance, for, it provided opportunities for the British Government to exercise an effective control over the Secretary of State for India. Besides, it afforded a great relief to the Indian finance.

3. The distinction between the secret, urgent and other matters in the correspondence of the Secretary of State was also done away with.

(b) *Changes in India Council*

The Act introduced considerable changes in the composition of the India Council, and the qualifications, term of office and remuneration of its members. Henceforth, the India Council was to consist of not more than twelve and not less than eight members.* Half of them were required to be persons, who must have resided or served in India for at least ten years. Their term of office was reduced from seven to five years. They were, however, eligible for reappointment. The salary of a member of India Council was raised from £ 1,000 to £ 1,200 a year. The Indian members were given, in addition, an annual allowance of £ 600. The meetings of the Council were to be held at least once a month, instead of once a week.

*Previously, the Council had not more than 14 and not less than 10 members.

(c) *High Commissioner for India*

The 1919-Act made provision for the appointment of a High Commissioner for India. He was to act as the agent of the central government as well as of the provincial governments. He was to look after the agency functions which were hitherto performed by the Secretary of State for India. In that capacity he was to discharge the duty of procuring store for Indian Governments, furnishing trade information and promoting the welfare of Indian trade. Apart from that, the High Commissioner was to watch the interests of Indian students studying in England. The Secretary of State might assign to him any other function on his own discretion.* It was expected that the new office would have a sentimental value because the other dominions also were represented by their respective High Commissioners.

The appointment of the High Commissioner for India, however, did not inspire much confidence amongst the Indians. For, the Governor-General, who was the appointing authority of the High Commissioner could never escape the general influence and control of the Secretary of State for India. Hence, there existed little possibility of improvement in the existing conditions.

II—CHANGES IN THE CENTRAL GOVERNMENT OF INDIA

Under the Act of 1919, the structure of the Central Government of India also underwent a change. Some significant alternations were made in the composition, powers and functions of the Central Legislature. The constitution of the Viceroy's Executive Council was also slightly modified. The changes at the centre were, however, not as vital and radical as those introduced in the provincial sphere.

(A) CENTRAL EXECUTIVE (*The Governor-General*)

The changes introduced in the Central Executive (consisting of the Governor-General and his Councillors) were not very striking. They did not, in any way, affect the nature and composition of the Executive, nor did they touch the unrestricted, unlimited and irresponsible despotism of the Governor-General. As before, the superintendence, direction and control of civil and

*Sir William Meyer was appointed the first Indian High Commissioner at London. He was not given all agency functions.

military government of India remained vested in the Governor-General-in-Council. He also continued to enjoy his vast and varied powers, which made him the real governing authority in British India. His position was further strengthened by the powers (of certifying bills, restoring cuts, promulgating ordinances etc.) granted to him by the Act. Although the executive authority of the Government of India was vested in the Governor-General-in-Council, yet he was the more important part of the Council. It could be reasonably said that he was not merely a part of the whole but, in a way, constituted the whole. This dominating position of the Governor-General was due to many causes, the important amongst them being : (i) his position as a representative of the King of England, (ii) his high social status, (iii) his almost continuous and direct contact with the Secretary of State for India. Moreover, the rules of conduct and his patronage with regard to the appointment and promotion of his Councillors also made him sufficiently strong. In the words of a British writer, "The Governor-General of India enjoyed the most responsible as it was the most picturesque and distinguished office in the overseas services of British Crown".

The 1919-Act removed the maximum limit imposed on the membership of the Executive Council. It was to have six members besides the Viceroy and the Commander-in-Chief. Three of these members were to be Indians (instead of one as before). Pleaders of Indian High Courts with ten years' standing were eligible for its membership. The increase in the number was meant to give effect to the policy of increasing association of the Indians in every branch of administration. But this strength of the Indian members remained unchanged till 1941, when the Viceroy's Council was again expanded. The Indian members held office for five years and relatively unimportant departments, like Law, Education and Health, Industry and Labour were entrusted to them. The important portfolios, like Finance, Home Affairs and Defence remained with the Britishers.

Comments

The constitutional set-up of the Central Executive, established under the Act, was not satisfactory. Its members represented no body except themselves. Since all ordinary and extra-ordinary powers in the matters of legislation, administration and finance rested with the Governor-General, they felt no responsibility

towards the Central Legislature. The more so, when they knew that even a vote of censure could not compel them to resign (as they could be removed only by the Secretary of State). Besides, the addition in the number of the Indian members was of no practical value. It simply enabled the Governor-General to add a few 'yesmen' (*Han-Hazurs*) to his Executive Council who, basking in the sunshine of his patronage, had no more ambition than to swell their bank balances and to provide jobs for their relatives.* However, as a purely advisory body, the Executive Council was of valued assistance to the Governor-General. Its members provided him with the necessary knowledge of the country and this enabled him to appreciate the issues and maintain continuity of policy".

(B) CENTRAL LEGISLATURE

Under the Reforms of 1919, the Central Legislature was entirely remodelled and made bicameral. Now, it was to consist of two chambers—the Council of State and the Legislative Assembly. Both these houses were to be elected directly. The Legislature was also made more representative and influential.

(a) *The Council of State*

(i) The Council of State was the upper chamber of the Central Legislature. It was to consist of 60 members, one of whom was to be appointed as the President of the Council by the Governor-General. Out of the remaining 59 members, 34 were to be elected and 25 nominated. The 25 nominated members comprised 19 officials and 6 non-officials. The 34 elected members were to be returned in the following manner : 20 by general electorates, 3 by European Chambers of Commerce and 11 by communal electorates (10 by Muslims and 1 by Sikhs).

(ii) The franchise of the Council of State was extremely restricted. Also, it differed in different provinces. It was based on a high property qualification. Persons having either an annual income of not less than Rs. 10,000 (to 20,000/-) or paying land revenue of Rs. 750/- (to Rs. 5000/-) were entitled to vote for the Council. The franchise was also bestowed for special personal qualifications, such as past or present membership of a university senate or a legislature. As a result of these high qualifications,

*Dr. Ishwari Prasad : *History of Modern India* P. 392

the total number of the voters for the Council of State was about 17,364 in 1920.

(iii) No woman was entitled to sit in the Council and the designation of 'Hon'ble' was to be enjoyed by the members of this chamber.

(iv) The life of the Council was fixed as five years.

(b) *Legislative Assembly*

(i) The Legislative Assembly was to be the lower house of the Central Legislature. It was to consist of 143 members—103 elected and 40 nominated. The 40 nominated members comprised 25 officials and 15 non-officials. The 103 elected members were to be returned as : 51 by general constituencies ; 32 by communal constituencies (30 by Muslims and 2 by Sikhs) and 20 by special constituencies (7 by landowners, 9 Europeans, and 4 by Indian commences).

(ii) The franchise of the Assembly was also based on property qualification and varied from province to province. The payment of municipal taxes amounting to not less than Rs. 15 (to Rs. 20) per annum or occupation or ownership of a house, which could yield an annual rent of Rs. 180 or assessment to income tax on an annual income of not less than Rs. 2,000 (to Rs. 5,000) or assesment to land revenue for Rs. 50 (to Rs. 150) per annum varying from province to province could entitle a person to be a voter for the Assembly. The total number of voters for the Legislative Assembly in 1920 did not exceed ten lakhs (909,874).

(iii) The life of the Assembly was fixed as three years.

(iv) The first Speaker of the Assembly was to be nominated by the Governor-General. Thereafter, this office was to be filled up by election with his approval.

(v) The distribution of its seats among the Provinces was based upon their supposed importance and not on their population. For instance, Bombay, with less than half the population of Madras, was given equal representation with the latter presidency (16 members), because of its commercial importance. Similarly, Punjab, with two-thirds of the population of Bihar and Orissa, was given the same number of seats as allotted to the latter (12), because of its military importance. Weightage in representation was given not only to the minority communities but also to the smaller provinces of India.

(c) Powers and Functions of the Central Legislature

The powers of the Central Legislature were enlarged. It could make laws for the whole of British India and for the subjects of His Majesty and services of the Crown in other parts of India. All subjects included in the Central lists were within its legislative jurisdiction. It could also legislate upon certain provincial subjects. It had, in addition, the concurrent jurisdiction over the provincial field. The members of both the houses of Central Legislature had the right of making interpellations, asking supplementary questions, and of moving resolutions and adjournments. They enjoyed the right of freedom of speech in the two chambers. Thus, the Legislature was made a more effective means of criticising and holding the Government within lines of action approved by Indian feeling. As regards financial matters the two houses had equal and concurrent powers. No bill could be presented to the Governor-General for his assent unless it was passed by both the houses in the same form. The annual estimate of expenditure was simultaneously placed before the two houses for general discussion. But the right of vetoing supply was the exclusive privilege of the Assembly. A very large part of the budget was non-votable.

The powers of the Legislature were, however, subject to certain restrictions. It could not introduce any bill relating to the public revenues and debt, religious rites and usages, the army, foreign affairs etc. without the prior sanction of the Governor-General. The Governor-General could prevent the consideration, at any stage, of a bill or a part of the bill in either chamber of the Central Legislature if, in his opinion, it affected the safety or tranquillity of British India or any part thereof. He could certify any bill and sign it as a permanent law on his sole and absolute authority in spite of the curt refusal of the Legislature. He had the power of making and promulgating ordinances for the peace of British India. Such an ordinance had the same force of law as law passed by the Indian Legislature. The assent of the Governor-General was essential for the enactment of a law passed by the Legislature. He had the power to give his assent or reserve the bill for the signification of His Majesty's pleasure on the same.

Comments

Though the Reforms of 1919 added another chamber to the Central Legislature, increased the number of its elected members and extended the opportunity of talk, yet they failed to establish

even a partial responsible government at the Centre. Nothing substantial was granted to the Central Legislature in vital matters of controlling the executive, formulating legislation and directing the finance. Nearly 60% of the budget was withdrawn from the vote of the Legislative Assembly. And with regard to the remaining 40%, the Governor-General was empowered to restore any demand refused or reduced by the Central Legislature. The Governor-General was also empowered to authorise at his own unfettered direction any expenditure in view of emergency of which he himself was the sole judge. Thus, the Central Legislature enjoyed no power of purse, the absence of which was really deplorable. Its legislative powers were equally circumscribed. Moreover, the Legislature was not a responsible and democratic body and the upper chamber was an additional safeguard for the Government. "The Council of State was so planned and constructed," writes Srinivas Aiyangar, "that it checkmated the Assembly and formed an impregnable citadel for the Government." Apart from that, its complex composition and high property qualifications made it the representative and custodian of the vested interests, the zamindars and the capitalist classes.

The franchise of both the houses being restricted, a very little part of the Indian population participated in the elections. And on account of the special powers of the Governor-General in the sphere of legislation and supplies, the Legislative Assembly did not command much influence and power.

III—CHANGES IN THE PROVINCIAL GOVERNMENTS

Under the Act of 1919, more vital and radical changes were introduced in the provincial administration, because it was in the provinces that the earlier steps towards the progressive realisation of responsible government were to be taken. A new type of government known as 'dyarchy' or double government was introduced in the nine major provinces. The Provincial Legislatures also witnessed marked changes in their composition, powers and functions. But before this new type of government was introduced, the central control over the provinces was relaxed. This was done by means of (a) demarcating a number of subjects as provincial subjects and giving the Provincial Governments a large measure of freedom in their administration, (b) allocating separate heads of revenue to the Provinces, (c) drawing a distinction between the 'Transferred Subjects' and the 'Reserved Subjects.'

DYARCHY

(A New Type of Government in the Provinces)

The Government of India Act, 1919 introduced a new system of administration in some of the Indian Provinces known as 'Dyarchy.*' It was a political experiment calculated to meet, in some measure, the popular demand of responsible government in India. Its immediate object was to train the natives in the art of self-government preliminary to 'the progressive realisation of responsible government in British India'. For, the authors of the Joint Report believed "that complete responsibility for the government could not be given immediately without inviting a breakdown, and that some responsibility must be given if the scheme was to have any value".

Under this grotesque system of government, the provincial subjects, as demarcated from the central subjects, were divided into two parts—the 'Reserved' subjects and the 'Transferred' subjects. The 'Reserved' subjects included Administration of Justice, Police, Irrigation and Canals, Land Revenue administration, Famine Relief, Control of Newspapers etc.—the subjects considered essential for the welfare of the masses and preservation of peace and order. The 'Transferred' subjects covered Local Self-Government, Education, Agriculture, Fisheries, Religious Endowments and Medical Administration. They were called 'nation-building' departments. For, they furnished more opportunities for social service and stood most in need of development.

The provincial executives were also divided as Governor-in-Council and the Governor acting with the Ministers, to match the administrative division. The Governor-in-Council was entrusted with the administration of 'Reserved' subjects, while the 'Transferred' subjects were to be administered by the Governor with the help of the Ministers. The members of the Governor's Executive Council were to be appointed by the Crown for a period of five years and receiving a fixed pay. They were responsible to the Governor and not to the Provincial Legislature. The Ministers were to be nominated by the Governor from amongst the elected members of the Provincial Legislature and they were to hold office during his pleasure. Their salary was to depend on the vote of the Legislature. Thus, such a system of provincial

*This scheme was invented by the imperial theoretician Lionel Curtis.

administration, where there existed two halves of the Government—one Governor-in-Council and the other Governor acting with the Ministers; one in charge of the 'Reserved' subjects and the other of the 'Transferred' ones; one responsible to the British Parliament and the other to the Provincial Legislature; one dominating and the other recessive—was styled as the celebrated 'Dyarchy'.*

Though the two wings of the Provincial government operated in two distinctly separate fields and were responsible to two different masters, yet they had common All India Services. Besides, the Finance Department, which was placed under a Councillor, was also common to both the halves of the Government. The Governor was expected to serve as a link between the two groups and harmonize their efforts. In the words of M.V. Pylee, "The Governor was not only to yoke the Councillors and the Ministers to the chariot of Provincial administration, but was also to drive it.†

DEFECTS OF DYARCHY—ITS FAILURE

Dyarchy, no doubt, worked for over a period of sixteen years, yet it worked creakily. According to the Minority Report of the Reforms Enquiry Committee the new system operated in the spirit of reasonableness during the first three years and there prevailed a spirit of harmony, good will and co-operation between the Legislature and the Executive. But after 1924, the new constitution proved unsatisfactory and unworkable. The constitutional breakdowns in Bengal and C.P. clearly demonstrated that the system had fallen short of the expectations of its authors and was also incapable of yielding better results in the future.‡ Consequently, the system was abolished in 1937, giving place to a new scheme of administration, known as 'Provincial Autonomy'.

The constitution of 'Dyarchy' as a matter of fact, had such

*It would not be out of place to mention here that the provinces of Bengal, and Madras had four councillors and three ministers; in Bihar and Orissa there were three executive councillors and two ministers. The remaining provinces had two councillors and two ministers each.

†Pylee M. V. ; *Constitutional Government in India*

‡Prof. R. Coupland writes : 'The new constitution failed to fulfil its authors' primary purposes. It did not provide a training in parliamentary responsible government and it did not bring about a subordination of communal allegiance and antagonism to the common public interest'. *India, a Restatement* P. 121.

inherent defects that its successful working was doubted from its very inception. The division of the Provincial Government into two water-tight compartments, as envisaged by the scheme, was repugnant to the principle of efficient administration. It was impossible to run the government in two halves without detriment to its efficient working. For, every government like an organism is a unity and cannot be divided into two parts separated from each other. Under the dyarchical system, the Minister in charge of education could never be expected to undertake successfully any piece of legislation, involving some measure of compulsion such as compulsory primary education, compulsory adult education etc., without the honest support and active co-operation of the members in charge of finance and Law and Order. Similarly, Sikh Gurdwara agitation in the Punjab could not be allayed properly by the department of Law and Order without the necessary legislation to be undertaken by the Minister in charge of 'Religious Endowments'. Evidently, the system had no logical basis and was rooted in compromise. In this lay a basic weakness of this constitutional experiment.

The 'unscientific and illogical' demarcation of the provincial subjects between the two halves was another drawback of the dyarchical government. No Minister was allowed an unshared control over any single department. Education, being a 'transferred' subject, was placed under a Minister, but European and Anglo-indian Education was kept under the control of a British Councillor. Agriculture was demarcated as a transferred subject, while Irrigation was treated as a reserved one. Thus, the Ministers in charge of the transferred subjects worked under serious handicaps, which did not allow them to give a fair discharge of their obligations. This disadvantageous position of the Ministers was beautifully described by Sir K.V. Reddi, the ex-Minister of Madras, in these significant words, "I was ■ Minister for development without Forest. I was a Minister for agriculture minus irrigation. As Minister of Agriculture, I had nothing to do with the Madras Agriculturists' Loans Act or the Madras Land Improvement Loan Act. Famine Relief, of course, could not be touched by the Minister for Agriculture." Evidently, placed in such a handicapped position, no Minister could give ■ good account of himself.

The entire dependence of the Ministers on the support of the Governor, his services and reserved half in the conduct of admini-

stration, affairs of legislation and also in matters of their own appointment and dismissal, was the worst defect of the new constitution. The position of the Governor under the dyarchical system was not that of a 'constitutional head'. He was, on the other hand, a constitutional dictator. He was responsible neither to the Governor-General nor to the Council and could act, if he chose, in an autocratic manner. He could appoint any member of the Provincial Legislature as a Minister. He could dismiss any Minister from his office. He could keep in office any of the Ministers even in the teeth of strong opposition of the Provincial Legislature. Such an overwhelming position of the Governor placed the Ministers under an official tutelage or domination, which made it hard for them 'to breathe the oxygen of freedom'. Mr. C. Y. Chintamani openly observed, "The real power was with the Governor and not with the Ministers". The Raja of Pungal gave out the bare truth, when he submitted that 'he was responsible only to the Governor'. Indeed, the Ministers, who were more anxious to retain their offices than to relinquish them, exhausted all efforts to please their powerful boss unmindful of the wishes of the Legislature to which they were theoretically responsible. The pernicious practice of appointing the Ministers subsequently as Executive Councillors, writes K.V. Punnaiah, 'completed their degradation and sank them to the position of glorified secretaries'.*

The position of the Ministers with regard to the administration of the reserved subjects, with which rested the pith and marrow of the government and which were of vital importance to the Indians as a nation in their struggle for freedom, was highly deplorable. They had absolutely no voice in determining the policy of the government. Their advice on such an important questions whether Mahatma Gandhi ought or ought not to be arrested was never sought for. The Ministers never formed the part of the government to consider whether in relation to the Non-Co-operation Movement a repressive policy should or should not be initiated. Their position, in the words of C.R. Das, was, in no way, better than the 'dumb spectators' of the fight that was raging between the Indians and the British Government.

The position of the Ministers in respect of the transferred subjects was no whit better. In spite of the Indians' majority in a

*Punnaiah K.V. :—*The Constitutional History of India* P. 207

Provincial Legislature, they had to depend upon the Governor and his official bloc to keep themselves in power. The reasons for this dependence of the Ministers were obvious. The principle of separate and communal electorates, as introduced in 1909 and extended under the Reforms of 1919, divided the legislature into many small groups. The only two large and well disciplined groups in most of the Provincial Legislatures were those of the Swarajists and the officials. The former, unfortunately, believed in the policy of obstruction. They had entered the Assembly not to work it but to wreck it from within. Hence, they neither accepted the ministerial posts nor co-operated with the Government and tried to effect constitutional breakdowns. This attitude and policy of theirs could not but increase the importance of the nominated bloc (the other solid and well-organised group) and drove the Ministers into the arms of the Reserved Half. The example of the Madras Legislature would afford a case in point. Of the 132 members of the Madras Legislature, the Governor always had at his command the votes of a bloc of 46 (officials 11, nominated non-officials 23, Europeans and Anglo-Indians 6 and Land-holders 6). Of the remaining 86 elected members, 67 (*i.e.* 80% of the elected members) were needed to form a ministry independent of the official bloc. And this was absolutely impossible except under the revolutionary conditions. Thus, the Ministers had to depend upon the Governor and his official bloc to form a ministry necessitated to run the transferred subjects.

To make matters worse, the principle of joint responsibility was not secured under the system. The initiative in this connection rested with the Governors who generally did not encourage this practice. Hence, in the absence of joint responsibility, every Minister would dance attendance upon the Governor to win his (Governor's) favour. For, this gave him a good chance of his continuing in office. Thus, the Ministers were likely to get more training in the art of flattery than in the science of responsible government. Moreover, the policy of the Provincial Governors to deal with the Ministers individually caused bickerings among the Ministers, lowered their prestige before the public, weakened their position in the Legislature and placed them entirely at the mercy of the Governors.

Another disappointing feature of the dyarchy was the position of the Permanent Services *vis-a-vis* the Ministers. Many member of the Indian Civil Services was placed under the Indian Ministers.

The latter expected them to work in subordinate co-operation and implement the policies according to their (Ministers') wishes. But the Services, who wanted the Ministers to be led by their advice and experience, would not work upto their expectations. Rather, they often annoyed the Ministers by their defiant attitude and insubordination. In case of a dispute or disagreement between the Services and the Ministers, the matter was referred to the Governor for final decision. Here again the Ministers were placed in a disadvantageous position. The members of the Services, who acted as departmental secretaries, had direct access to the Governor independent of the Ministers. They got frequent opportunities to meet the Governor and discuss with him the important matters of their respective departments. There was every possibility of their influencing the Governor behind the back and without the knowledge of the Ministers. The result was that the Governors generally decided the disputed points in favour of Services and against the Ministers. This was, indeed, a very painful and bitter experience for the Ministers, as nothing can be more humiliating for an officer than to see that his subordinates could get his decisions reversed in their favour.

The peculiar position of the Finance Department and its exclusive control over the 'Transferred' subjects made the 'powers of the Ministers as unreal as that of a puppet'. It was a department common to both the wings of the Government, but was placed under the control of an Executive Councillor. The attitude of the Member-in-charge of the Finance towards the 'Transferred' departments was not at all favourable. According to Mr. Chintamani, "His greatest anxiety was to see that the Reserved departments got all the money they required before the Transferred departments got what they wanted". Hence, the requests of the Ministers for adequate funds for new schemes were never accepted. As a result of it, the Ministers could not do anything substantially useful to the people. The Finance Department also put many technical hurdles in the way of the Ministers. Sometimes, it declined to offer its advice on schemes involving expenditure ; sometimes, it refused to make grants on the ground of delay ; sometimes, it turned down the proposals as useless. Thus, with one pretext or the other, the Finance Department tried to postpone the schemes as long as it could possibly manage. If at all, the schemes, after crossing all the technical obstacles, were approved by the cabinet, 'devices were

found to defeat them or at least delay them till the end of the financial year, thus, compelling the Ministers to start at the beginning once again'. Obviously, the control of the Finance department over the Transferred half was irksome and mischievous. The Ministers had to face various difficulties. While pointing them out before the Reform Enquiry Committee, Mr. Chintamani said, 'I am prepared to state this without any exaggeration that the Ministers had to contend with great difficulties, when they went to the Finance Department. Pretty frequently they had to go before the Governor, pretty frequently the Governor did not side with them and pretty frequently they could only gain their point in the end by placing their offices at the disposal of the Governor.'

Besides, the Reserved Half being associated with the Finance Department knew all the schemes of the Transferred half, got early information regarding the position of the funds, applied earlier for the reappropriation and then got the lion's share of the state revenue. The Ministers did not have any such facility or advantage.

The powers of the Ministers with regard to appointments were extremely limited. They could neither fill up any important vacancy nor abolish a superfluous post in their departments. C.Y. Chintamani, the first Minister of Education in U.P., stated that he was overruled by the Governor in matters of varying degree of importance and unimportance down to nomination to a Library Committee. This lack of real authority coupled with their efforts to feather their own nests made their position ridiculous. In the words of M.V. Pylee, "Ministership under dyarchy became a byword for opportunism, or the patronage of the British Government".

Was the failure of 'Dyarchy' due to its inherent defects ?

The breakdown of Dyarchy in the Indian provinces was, no doubt, primarily due to its inherent defects. But some other factors also made a contribution towards its dismal failure. In the first instance, Dyarchy took birth under an unlucky star. Before the Constitution was put into operation (January 3, 1921), feelings in India had been deeply stirred. The Jallianwala Tragedy, the Khilafat Movement and the operation of stringent acts had given rise to a new kind of indigation. The Duke of Connaught, who inaugurated the Constitution amidst boycott, protest meetings and

hartals, painfully observed : "Since I have landed, I have felt around me bitterness and estrangement between those, who have been and should be friends. The shadow of Amritsar has lengthened over the fair face of India." Obviously, when people were so deeply alienated from the Government, the experiment of Dyarchy could not be given a fair trial. The prevailing atmosphere had destroyed even the slender chance, which the Dyarchy possessed on its own merit.

Secondly, the resignation of Montagu, the sympathetic Secretary of State for India, on March 9, 1922, gave a severe blow to the working of Dyarchy. The circumstances under which he relinquished his post gave the impression that Montagu had been sacrificed to satisfy the die-hard Conservatives who did not like his Indian policy. This greatly damped the spirits for the Liberal Party entrusted with the task of sowing the seeds of responsible government in India.

Thirdly, the undisguised hostility of the bureaucracy in India also counted for its ultimate failure. Immediately after the publication of the Montford Report, the senior members of the I.C.S. raised a voice of protest against it. For, they were not ready to part with their power and serve under the Indian Ministers. Thereafter, they raised in England the cry of "I.C.S. in danger." Such a nasty propaganda not only led to their premature retirement, but also made them non-co-operative in their working.

Fourthly, the Prime Minister's (Lloyd George's) speech in defence of the Services, prompted by his desire to ease the situation, further minimised the chance of its success.* The Indians, read in it an open and undisguised attempt to repudiate the policy of 1917. It also gave an impression that the Reforms of 1919 were more a sham than a reality. This created almost ■ consternation in the ranks of the Moderates, who consequently became indifferent towards the success of the new Constitution. According to Dr. R.C. Majumdar, Lloyd George's speech did not seem to be an individual outburst, but the outcome of deep-seated policy or conspiracy on behalf of the I.C.S., and its effect was more serious.

*He remarked : "There is one institution which we will not interfere with, there is one institution we will not cripple, there is an institution we will not deprive of its functions or of its privileges, and that is the British Civil Services in India".

Fifthly, the attitude of the Indians towards the Reforms of 1919 was not very helpful. They held that the Reforms constituted only a half-way house between autocracy and responsible government, and that they would get something more important in the near future. So they did not evince the interest which was necessary for their (Reforms) success. Even the Liberals or the Moderates, who were quite optimistic in the beginning gradually became disappointed.

Sixthly, the subsequent financial distress and the Meston Award also brought about the failure of this experiment. In 1920, the monsoons failed; the crops did not grow in plenty; slump visited the Indian markets, and all this added to the misery of the people. The Meston Award, which required the provinces to make substantial contributions to the Government of India, irrespective of their financial difficulties, further worsened the situation. Consequently, the Provinces failed to give a fair trial to the new Constitution.

According to Appadorai the failure of the dyarchy was, to a greater measure, due to the non-co-operative attitude of the Congress and the League. During the period Dyarchy was in operation (1921—1937), their interest centred, not round administrative achievements or the manner in which the machinery of government worked but round the struggle of the Indian people as a whole to secure independence. Moreover, the refusal of the Swarajists (who formed the largest single party in most of the Legislatures) to form ministries and their continuous efforts to bring about a breakdown did not allow the responsible government to function properly. Apart from this, the Ministers were selected from groups, whose hold on the Legislature was precarious and they were kept in power with the votes of the officials and nominated members. So they were looked upon as a part of official bloc, and they had to share much of its unpopularity.

PROVINCIAL LEGISLATURES

(Legislative Councils)

(i) The size of the Provincial Legislatures was considerably enlarged, but they were to have only one house known as the Legislative Council. Their maximum strength was fixed at 140

in the major and 60 in the minor provinces. At least 70% of their members were to be elected, and not more than 20% could be officials. The remaining 10% were to be nominated non-officials. A substantial number of the nominated seats in each Council was reserved for the representation of certain classes and interests (Depressed classes, Europeans, Labour etc.) which could not obtain due representation through election.

(ii) There was to be a direct method of election for the Provincial Councils, but the constituencies for the purpose were to be designed to represent particular communities or special interests, such as the Universities, Landholders, Chambers of Commerce etc.

(iii) The qualifications prescribed for voters were such that only 2·8% of the Indian population had the right to vote for the Provincial Councils.

(iv) The normal life of a Provincial Council was fixed as three years. But it could be dissolved earlier by the Governor. He could also extend its duration by a year at a time.

(v) The powers of the Provincial Councils were considerably enlarged. Their members could ask questions and supplementary questions. They could move resolutions to ventilate popular grievances. They had also the right of general discussion as well as voting on demands for grants. Besides, the Provincial Councils were empowered to make laws for the peace, order and good government of the provinces.

(vi) The special powers of the Governor with regard to legislation and the budget were, however, a great check on the Provincial Council. In regard to legislation on the reserved side, he could certify bills to which the Legislature had refused its assent. Bills, thus certified, became Acts over the head of the Legislature. Similarly, in the case of a grant refused or reduced by the Council, the Governor could restore it by certifying the demand as essential for the discharge of his responsibility for the subject. He could also authorise any expenditure, which he deemed necessary for the safety or tranquillity of the Province.

(vii) Bills passed by the Provincial Council required the assent of the Governor. He had the right to assent to a bill or to refuse assent or reserve it for the consideration of the Governor-General.

Comments

The Provincial Councils, under the Act of 1919, marked a definite improvement in their powers and functions. But, despite all this, they had some basic weaknesses. The constituencies being sufficiently vast, there could be no personal contact between the members of the Councils and their voters. The majority of the voters were illiterate, who hardly realised the purpose and importance of their vote. On account of the absence of political parties, elections were largely personal contests. Political, economic and social opinion had no influence on the elections. The principles adopted for the constitution of the Councils could hardly claim to be in the national interest.

OTHER PECULIARITIES

Extension of communal representation

Under the Morley-Minto Reforms of 1909 a beginning had been made in respect of separate communal representation. The Muslims were granted six seats in the Central Legislature. The 1919 Act, in spite of all denunciation by the authors of the Joint Report, extended this anti-national and undemocratic principle. Hence, under the new Constitution, the Sikhs in the Punjab, the non-Brahmans in Madras and the Marathas in Bombay were given separate representation. The share of Indian Muslims was widely extended both at the Centre and in the Provinces. Provision was also made to give special treatment to Indian Christians, Anglo-Indians and Europeans. Thus, the communal representation, regarded an exception to the rule in 1909, now became an essential feature of the Indian politics. The divisions and subdivisions of the general constituencies and then special constituencies representing special interests (like universities, landholders, industry and commerce) aimed at nothing but disintegration.

Generous safeguards for Indian Civil Service

The members of the Indian Civil Service knew it well that they would not enjoy the former influence and respect under the new Constitution ; they would no longer be India's policy makers. Rather, they would have to work under the Indian ministers. They were, therefore, opposed to the grant of further political concessions. According to Edwin Montagu, the proposals for granting political concessions to the Indians were extremely unpopular with the officials, who exclaimed with one mind, 'Not in

our time O Lord :’ In view of this attitude of the British officials, generous safeguards were provided in the Act to ensure the predominance of the British element in the Indian Civil Service : (a) The Secretary of State-in-Council were empowered to make rules in regard to the classification of Indian Civil Services, the method of their recruitment, conditions of their service, pay, allowances, discipline and conduct ; (b) a substantial increase was made in their emoluments ; (c) the provincial governors were given special responsibilities to protect their interests.

In spite of these safeguards and reservations, many English officials lost their heart and chose to go home. About 10% of their members preferred to retire prematurely on a proportionate pension. Those who remained in India, writes Sir Edward Blunt, ‘lost a part of their former zeal and their former driving power.’ This was an alarming development in the eyes of the policy-makers.

Chamber of the Princes

The Montford Report made a strong recommendation for the formation of a Council of Princes or a Chamber of Princes to place the point of view of the Indian states before the British Government. This idea found favour with most of the states as well as the British Government. Hence, on February 8, 1921, the Chamber of Princes was set up in Delhi by a Royal Proclamation. Its inauguration was performed by the Duke of Connaught in the Diwan-i-Am of Mughal Palace in Delhi on behalf of the King Emperor.

As regards the constitution of the Chamber of Princes, it represented : (i) 180 states, whose rulers were the members in their own right, (ii) 27 other states, which elected 12 representatives of their own. The Viceroy was its President. The Chancellor and Pro-Chancellor were to be elected annually from amongst its members. It met annually in its own Hall of Debate known as Narindra Mandal. Its executive body advised the Viceroy on the questions referred to it by the latter. The executive body also proposed, for consideration, such other measures as affected the Indian states.

The establishment of the Chamber of Princes as a forum of mutual consultations among the Princes was an event of far reaching importance. It indicated that the paramount power had

abandoned its age-long policy of isolation and had welcomed their co-operation. Besides, it was a clear recognition of the right claimed by the Princes to have a voice in the Councils of the Empire and to participate in the discussions on questions affecting the states, as a whole. The Chamber, however, failed to achieve its object. Some Princes refused to attend the meetings of the Chamber. Nizam always adopted an attitude of detachment from it.

SECTION IV

WORKING OF DYARCHY

On January 3, 1922 'dyarchy,' the unique experiment in the field of self-government, was introduced in eight provinces, viz. Bengal, Bihar, Assam, Madras, Bombay, Punjab, the United Provinces and the Central Provinces. Eleven years later (in 1932), it was extended to North-West Frontier Province as well. Thus, the new system of administration was tried in nine provinces and it worked till 1937. The smooth functioning of the 'dyarchy,' however, remained disturbed in the Central Provinces from 1924 to 1926 and in Bengal from 1924 to 1927 and again in 1929. In other seven provinces, of course, it worked continuously, though with a varying degree of success. "As a matter of fact," writes Sri Ram Sharma, "the working of the dyarchy depended more on men and little on institutions. But very few Governors believed in 'dyarchy' as a working system of administration and fewer capable Indians could be discovered willing enough to run the transferred half of the Government under what seemed to them to be its galling restrictions."* Consequently, during the sixteen years it was in operation, the dyarchy changed its form several times. The experiment, on the whole, proved a failure. It was amply clear from the evidence of those who worked out the reforms as Ministers. According to Surendranath Banerjee, Ministers of all the Provinces, without exception, regarded dyarchy as a failure and urged that 'it should go as quickly as possible.' Sri P.C. Mitter, a Minister of Bengal, observed: "Soon after joining the Government, I realised that the system was unsatisfactory and unworkable." Sir K.V. Reddy (Madras) was quite emphatic, when he said: "It is admitted on all hands that dyarchy has failed. Even in the Province of Madras, where an

*Sharma Sri Ram : *A Constitutional History of India*, P. 129.

honest attempt has been made to work the reforms in the spirit in which they were conceived, dyarchy has absolutely failed.”

(a) *Reserved Half—its working*

The reserved half of the provincial government consisting of the Governor and his Councillors administered the reserved subjects with which rested the pith and marrow of the government. The Governor's Council had 2 to 4 members, each in charge of a department. In the administration of his department, each member was empowered to settle the minor questions of disagreement between a member and a secretary ; projects of legislation, questions concerning public services etc. were placed before the Council. The decision was taken by a majority vote and the Governor had the right to exercise a casting vote in case of a tie. He had also the power to override the decision of the majority, but this power was rarely exercised.

The relations between the Governor and the Executive Councils were generally cordial. But the attitude of the Legislative Councils towards the official part of the Executive was not always subservient. They utilised the power of voting on demand to bring pressure on the Executive to conform to the wishes of the Legislative Council. They rejected or reduced the demands of grants made for reserved subjects. The Bombay Council threatened to reject the Stamp Bill if their demand to cut 60 lakhs from the Budget of 1922-23 was not met. The Government had to yield. Sometimes, they even refused to pass certain measures, which were deemed to be essential and desirable by the Government. It is true that the Governor had the right to certify and restore grants that were cut, yet it was not considered politic even by the bureaucratic Government to restore every rejected grant. The power of moving token cut also enabled the members of the Legislative Councils to criticise the Executive and to control and mend its ways to a certain extent. The Indian members, much to their credit, exercised this right in a responsible manner and their criticism, in spite of their weak position, proved sufficiently useful.

(b) *Transferred Half—its working*

The ‘Transferred half’ of the Provincial Government had only 2 to 3 Ministers, who ran their departments under the guidance of the Governor. They, however, did not have a corporate

existence. They never met to take decisions on the transferred subjects. The Governor consulted them individually and regarded them as merely advisers, whose advice he was not bound to accept. In case of any difference between a Minister and his Secretary on any issue, the disputed point was referred to the Governor, whose decision was final. More often than not, the Governor decided the issue in favour of the Secretary, who came of the same stock to which he himself belonged.

The position of the Ministers, under the dyarchical system, could not be happy. For, the Governors of the provinces did not act as constitutional heads in respect of the 'Transferred Subjects'. Besides, the I. C. S. men still reigned supreme. The Ministers had little or no control on them. The Finance Department was also not well-disposed towards the Transferred Half. Moreover, the lack of well-organised parties in the Legislature did not allow them to enjoy a strong backing in the Legislature and this, in turn, made them dependent on the official bloc. Worse still, the illogical division of the subjects and the galling domination of the Governor and Governor-General rendered their role all the more insignificant and unpleasant.

In spite of various handicaps, the Ministers gave a good account of themselves. Their achievements in the respective fields clearly demonstrated that the Indians were fully capable of carrying on the work of administration with the fullest sense of responsibility. It was all the more creditable that the Ministers also occasionally rose to the full height of the dignity of the position. Mr. C. V. Chintamani and Jagat Narain, the two Ministers of U. P., resigned their office as a protest against an action of the Governor, which they deemed to be unfair.

(c) Role of Governors in Provincial administration

The Governors were assigned a very difficult role in the provincial administration. They were to act as a link between the two halves of the Government. As such, they were not only to 'yoke the Councillors and the Ministers to the chariot of provincial administration but were also to drive it'. In respect of 'Reserved Subjects' the Governors were to be responsible to the British Parliament through the Governor-General. But with regard to the 'Transferred Subjects', they were to act as 'constitutional heads'. Most of the Governors did not act up to the

Indians' expectations. They looked upon the Ministers as mere advisers and often disregarded their opinion. Their excessive interference into the 'Transferred Half' discouraged the Ministers and rendered their so-called parliamentary responsibility to nothing but sham. The Governors also favoured the I.C.S. officials against the Ministers. Some of them virtually became irresponsible. They over-ruled the Ministers in matters of varying degree of importance and unimportance down to nominations to a Library Committee. According to Sir Chaman Lal Setalvad, an Executive Councillor in Bombay, 'the Governor instead of limiting his interference to exceptional occasions of fundamental differences, claimed that the Ministers' function in law was merely to advise'.

As regards their relations with the Provincial Legislature, the Governors had a sufficiently strong position. They had the power to summon, prorogue or dissolve the Legislatures. The conduct of elections to the Provincial Legislatures was also under their control. The preparation of the electoral rolls, the calling forth of the nominations of candidates, the selection of polling stations etc. were carried on by the Reserved Halves under their instructions. The Governors entertained the election petitions and appointed commissions to enquire into the disputed elections. In the matter of legislation too they had a considerably strong position. They often restored the grants rejected by the Provincial Legislatures. But there are instances, when a Governor tried to meet the Council half-way.

(d) *Provincial Legislatures*

The Provincial Legislatures were the nerve-centres of the administration. Both the 'Reserved' and 'Transferred' Halves were anxious to enlist its sympathy for their policy. Elections to it were held in a regular manner. The members were elected by single-member constituencies and the candidates and voters had to fulfil some prescribed conditions. Expenses on elections were checked after the elections, and election petitions were also entertained. Unfair practices were not permissible. The franchise was low for a population first permitted to exercise its vote, but due to system of communal electorates, political education of the people was retarded.*

*Sharma Sri Ram : *A Constitutional History of India* P. 175.

Responsibility of the Ministers to the Legislature

The Ministers were theoretically responsible to the Legislature but, in practice, they never felt any responsibility. This was due to the fact that the Governor, and not the Legislature, had the control of their appointment. He could keep a Minister even when the Legislature was deadly against him. In the early twenties of the present century, a Minister in the Punjab did not resign, when a Rent Control Bill sponsored by him was thrown out by the Legislature. In the United Provinces also the Legislature could not take a bold stand on the change of ministry. Only once was a nominee of the Governor driven to resign and this only, when he had been convicted of the unfair and corrupt practices by the election tribunal and disqualified for 5 years from membership of the Legislature.*

The Committees

In the Select Committee and Standing Committee, of course, much useful work was done by their members. They considerably influenced the governmental policy. For instance, the Public Accounts Committee considered the report of the Accountant General on the appropriation of revenue and expenditure of the province. It served a very salutary purpose of subjecting the offending heads of the departments to public examination. In many provinces it introduced careful methods of account-keeping.

The Legislators at work

The members of the House performed many useful functions. They liberally used their powers to ask questions and move resolutions. Many useful facts of public importance were elicited by questions, while the resolutions covered a wide range of subjects. The Madras Legislative Council passed important resolutions concerning franchise of women, the permanent settlement of land revenue etc. In Bengal, Surendranath Banerji, as Minister, amended the Calcutta Municipal Act in 1923, thus undoing the reactionary legislation of Lord Curzon.

The Legislature made laws on subjects entrusted to its care. All measures received three readings. During these sixteen years all the necessary regulations for transferred departments were enacted by the Provincial Legislatures. Only in one or two cases,

*Sharma Sri Ram—*A Constitutional History of India* Pp. 185-88

the bills passed by the Councils were not assented to by the Governor. Under the Reforms, the franchise to both Central and Provincial Legislatures was extended to about 7 million voters including 315,000 women.

SECTION V

GENERAL REVIEW

OF

THE MONTFORD REFORMS

The Montford Reforms were attacked on all sides. Right wing British opinion held that they undermined the *Raj* and gave authority to irresponsibility. Congressmen loudly proclaimed that they were a sham and not worth trying to work. But, viewed as a whole, the reforms constituted a solid and substantial achievement. They were an essential mile-stone on the road to self-government. To quote Prof. Spear, "Between the views of the many who said that too much or too little had been given, or that the reforms were a disaster or a farce, the fact remains that they made a great departure. India had been set on a new path and a beginning had been made with the transfer of power. Besides, Indian politics were committed to development along western lines. There could be no going back, the only conceivable change would be to go forward.*"

As a result of these Reforms, a large electorate had been created. The franchise for both central and provincial legislatures was extended to about seven million voters including 315,000 women. The people became familiar with the electoral process though they did not fully realise its significance. Besides, great interest was awakened in democratic government. There was a profound psychological change in the minds of ordinary people to whom the Government ceased to be a mystery and became an institution, which could be made to answer their needs.

Another great advantage of the Montford Reforms was that a large number of Indians had the opportunity to enter the reformed Councils for a useful training. Several of them became familiar with the problems of government and administration, while a good few gained administrative experience. They developed

*Spear : *A History of India* P. 189

a new confidence in their ability to run the government of their country by themselves.

The Reforms were also significant in so far as they made a real beginning of representative government. To quote R. Coupland, "The Act crossed the line between Legislative and Executive authority. Previous measures had enabled Indians increasingly to control their Legislatures, but not their Governments. Some Indians, it is true, had been members of those Governments but they had been officially appointed and were responsible, like their British colleagues, to the Secretary of State and Parliament. Now, Indians were to govern, so to speak, on their own. They were to take charge of great departments of provincial administration, not as official nominees but as the leaders of the elected majorities in their legislatures and responsible to them".*

Though the Reforms scheme failed in achieving its main object of introducing the system of responsible government, it was definitely more fruitful in the working of the legislatures. In spite of the autocratic character and spirit of the Government of India, the Legislative Assembly proved the most successful feature of the new Constitution. It successfully took up a number of legislations, over a variety of matters of national importance. Under the pressure from it the rash Press Law was revised and many of its obnoxious provisions were removed. The Assembly also had, to its credit, Indian Factories Amendment Act, Workmen's Compensation Act and the Indian Mines Act, which provided some essential safeguards for the protection of workers. As a result of the efforts of the Legislative Assembly, the Government had to appoint an Industrial Commission with a predominantly Indian personnel, and a Marine Committee to develop Indian shipping. Again, due to the pressure of the Assembly, the Government of India agreed to purchase all stores for Government and Railways in India. The role of the Provincial Legislatures under the scheme was also admirable. At times, the Governments had to yield to their pressure.

Even the much-criticised 'dyarchy' was a step towards the constitutional progress. It effected a radical change in the conception of the provincial government. In spite of high property qualifications, the franchise was extended to a large

*Coupland: *India, A Restatement*, P. 113.

number of men and women in the provinces. The legislatures also witnessed a great improvement. Their size was enlarged and 80% of their members were elected. In composition and atmosphere, the Provincial Legislatures were sufficiently akin to the British Parliament. Every Council had a Secretary and a Deputy President of its own from the very beginning. After four years they had their elected Presidents. Thus, the Councils now did not depend completely on the Governors for the provincial administration.

Besides, the Ministers and the members of the various committees of legislatures began to have an access to the official secrets, which hitherto had been jealously guarded. The Ministers now shouldered the responsibility of the policy of their departments and issued orders to the British officials of Indian Civil Service working under them. The recruitment of non-Indian civil servants to the 'Transferred' subjects gradually ceased. According to Sri Ram Sharma the presence of Indian Ministers as political heads of several important departments naturally accelerated the pace of the Indianization of the imperial services. No longer would a senior Indian of civil services spend all his life as a district officer. Besides, unlike the foreign bureaucracy, Indian Ministers were not afraid of touching the pitch of social evils for fear that it might defile them. Several creditable pieces of social legislation were undertaken, which the foreign rulers of the country had avoided in their reluctance to interfere with the established customs and beliefs.

The working of the Constitution in the provinces and at the centre gave many good experiences. It brought home to the authorities that a representative assembly and an irresponsible executive could not go together. To ensure the smooth working of the government, the executive must be subordinated to the control of the legislature. It also emphasised that India had come of age and her sense of nationhood had sensibly increased. She resented any external control of her affairs, which she considered as her birth right to manage.

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CHAPTER 11

The Government of India Act, 1935

The Government of India Act, 1935 was the last constitutional instrument given to India by the British Parliament. It was also the biggest of all the statutes ever passed by it. Besides, the Act served as the constitution of British India till August 14, 1947. Our present Constitution owes a good deal to this Act both in its language and substance. In the words of Prof. Spear, "For all its 'ifs' and 'buts', its complications and hesitations, the 1935 Act marked a point of no-return in constitutional development...In many ways the Act was a blue print for independence, a fact to which the retention of its general shape and the lifting of whole sections of the text into the Constitution of 1950 testifies"*.

SECTION I

CIRCUMSTANCES FAVOURING ITS ENACTMENT

The Montagu-Chelmsford Reforms of 1919 failed to satisfy the Indian aspirations. The Congress denounced them as 'inadequate, unsatisfactory and disappointing.' Tilak described them 'entirely unacceptable'. Mrs. Annie Besant held the view that the new constitution was 'unworthy to be offered by England or to be accepted by India'. In short, the reforms, as finally emerged out in the Act of 1919, found no favour in any quarter. The educated classes were particularly agitated, for the reforms had fallen

*Spear ; *A History of India*, P. 206.

considerably short of their expectations. They openly accused the British of giving no adequate reward to the Indians for their war services. Nevertheless, under the influence of Mahatma Gandhi, who had then entered the Indian political scene, the Congress resolved to work the reforms so as to secure the earliest establishment of responsible government in India.

The Rowlatt Bills and their reaction

In this atmosphere of resentment and indignation, the bureaucracy should have acted with foresight and consideration. But it failed to take a statesman-like view of the situation. On the other hand, in February 1918, it introduced the Criminal Law Amendment Bills, more widely known as Rowlatt Bills, in the Imperial Legislature*. These Bills conferred comprehensive powers of preventive detention on the Executive, making it easy for the Government to punish all suspected agitators. According to Dr. Ishwari Prasad, 'The provisions of the Bills were a shabby device to place on the Statute Book some of the most repressive measures, like the Defence of India Act. As a result, the civil liberty of subjects lost all meaning. They had fought the war for freedom, for self-determination, for liberty...in these Bills they saw the denial of those very principles.'†

No sooner did the Bills make their appearance in the Legislature than there spread in the country a wave of indignation. It seemed as though Britain's sense of obligation to India for all her services had ended with the termination of the war. Mahatma Gandhi responded with a direct challenge. He requested the Viceroy to withhold his assent to the Black Bills, as they were called. When his appeal did not yield any result, he decided to launch Satyagraha movement. This passive resistance campaign was inaugurated with the *hartal* on March 13, 1919. Unfortunately, disturbances took place in Delhi, Ahmedabad and some cities of the Punjab. The Government's measures to quell the disturbances with the help of military force and martial law worsened the situation. It also led to the ghastly tragedy of Jallianwala Bagh, which

*The Government of India had appointed a Sedition Committee in 1918 with Mr. Justice Rowlatt as its head to report on the revolutionary movement and recommend legislation that may be deemed necessary to suppress it. This Committee presented two bills known after the name of its chairman.

†Dr. Ishwari Prasad ; *History of Modern India* P. 396.

threw the whole country into delirious enthusiasm*. The Jallianwala massacre was followed by many other happenings in the Punjab which were equally tragic and frightening.

Gandhiji and Non-co-operation Movement

As the news of the atrocities perpetrated in the Punjab percolated to other parts of India, there spread a wave of horror and indignation. Rabindranath Tagore relinquished his 'Knighthood' as a measure of protest. He also wrote a strong but dignified letter to the Viceroy. Amidst these demonstrations of national resentment, the hostile attitude of England towards Turkey stirred the emotions of the Indian Muslims. And they soon started a politico-religious movement known as the *Khilafat* agitation. Gandhiji took advantage of the situation. By offering the Congress support to the cause of the *Khalifat*, he succeeded in establishing the Hindu-Muslim unity.† Soon after this, the non-violent non-co-operation movement became a joint programme of the Congress and the League.

This non-co-operation campaign was unfolded in the early months of 1921. The Indians boycotted the Government schools, colleges, law courts and foreign goods. They surrendered their titles and honorary offices. They also refused to attend the Government Leves, Durbars and other official functions. In consequence, there spread a great political awakening, and even far off places felt its influence. But, unfortunately, when the movement was in full swing, there occurred the tragedy of Chauri-Chaura in the Gorakhpur district of the United Provinces. A crowd of this village came into clash with the local police and burnt down a police station with some constables. Mahatma Gandhi was greatly pained at this happening and he immediately suspended the movement.

*This tragedy occurred at Jallianwala garden in Amritsar (Punjab) on April 13, 1919. General Dyer, the Officer Commanding of Jullundur division, ordered his 150 soldiers to fire at point blank range on the unarmed people, who had gathered to protest peacefully against the recent firing. Within a few horrible minutes hundreds of people died at the spot and more than 1,200 were wounded.

†Writing in *Young India* on May 11, 1921, Gandhiji declared that the Khilafat question gave the Hindus and Muslims the opportunity of a life-time to unite. "If the Hindus", he wrote, "wish to cultivate eternal friendship with the Musalmans, they must perish with them in the attempt to vindicate the honour of Islam".

The Swarajists and their Policy of Obstruction

The sudden collapse of the movement was bitterly resented by a large number of Congress workers. They firmly criticised Gandhiji's decision and then organised themselves into 'Swaraj Party' under the leadership of C. R. Das, Ajmal Khan and Pt. Moti Lal Nehru. The Swarajists did not look upon the *Satyagraha* as an effective method of agitation, nor did they favour the boycott of the Legislative Councils. On the other hand, they believed in capturing seats in the legislatures and then following the policy of 'uniform, continuous and consistent obstruction'. Like Parnell of Ireland, they aimed at mending or ending the constitution.

In the general elections of 1923, the Swarajists staged an impressive triumph and entered the legislatures in a big force. Next year, they moved an amendment in the Central Assembly urging the Governor-General-in-Council (i) to take early steps for the revision of the Act of 1919, (ii) to call a Round Table Conference including the Indian representatives to recommend a new constitution after its approval by the Indian Legislature. This amendment met with a great success and Muddiman Committee was instituted to enquire and report as to how far the Reforms of 1919 had successfully worked.

Muddiman Enquiry Committee, 1924

The Muddiman Committee, which was appointed in 1924, had 12 members including its Chairman Sir Alexander Muddiman.* The official element in it was in a majority. It had also on its panel some liberal and moderate politicians like Sir Tej Bahadur Sapru and Mohammed Ali Jinnah, who, however, constituted minority. In the report subsequently submitted by the latter (Known as Minority Report), they condemned the 'dyarchy' as unsatisfactory and unworkable. They also stressed the need of a great change in the constitutional set-up of India in order to place her constitution on a permanent basis. The Majority Report, on

*The Reforms Enquiry Committee which was appointed in 1924 had Sir Alexander Muddiman as its Chairman. Its other members were : Sir Muhammad Shafi, Maharajadhiraja Sir Bijay Chand Mahtab, Sir Arthur Froom, Sir Henry Moncrieff Smith, Sir Tej Bahadur Sapru, Sir Sivaswami Iyer, Mr. M. A. Jinnah, Dr. R.P. Paranjpe. The last four members submitted a Minority Report. *Banerjee's A.C. Indian Constitutional Documents* Vol. III P. 10.

the other hand, as was expected of it, recommended the continuance of the 'dyarchy' with slight modifications. It also contended that 'dyarchy' was best mechanism suited to the transitional period.

When the report of Reforms Enquiry Committee was presented for discussion in the Legislative Assembly, Pt. Moti Lal Nehru criticised 'dyarchy' as an unsuccessful experiment in administration. He also moved a resolution, which was carried against the Government by an overwhelming majority. This pressure of the Swarajists coupled with the British desire to exploit the unhealthy atmosphere of India (rendered so by the communal riots) for painting her black, led to the appointment of Simon Commission. This Commission was to enquire into the working of the Reforms of 1919 and to suggest further steps in regard to the establishment of responsible government in India.

Simon Commission and its Report

The Simon Commission landed in Bombay on February 3, 1928. It had seven members on its personnel and all of them were white men. Its leader Sir John Simon was an eminent lawyer of England. The exclusion of the Indians from this Commission, instituted to deal with a matter, which affected them most, infuriated the public opinion. All political parties, including the section of Muslim League led by Mr. Jinnah, decided to boycott the all-white Commission. Hence, the Simon Commission was greeted with complete *hartals*, black flags and the loud slogans of 'Simon Go Back'. Despite cold welcome and hostile demonstrations, the Simon Commission managed to tour the country with the help of a few bureaucrats and also carried on its investigations. But the evidence collected by the Commission could not claim to be quite representative of the political opinion of the more advanced sections. It, however, formed the basis of the report, which was submitted in 1930.

The Commission in its cautiously prepared and carefully worded report made the following recommendations : (1) 'Dyarchy' as a form of government in the Provinces, should be abolished. In its place full-fledged responsible government be established ; (2) the central control over the provincial governments be relaxed ; (3) the franchise should be lowered and extended. At least 10 to 15% people must be enfranchised ; (4) an All India Federation be established in the near future ; (5) Burma should be separated from India and Sind from Bombay. The Commission, however,

completely ignored the national demand for a responsible government at the Centre. The Central Executive remained as un-responsible, autocratic and inflexible as before.*

The Simon Commission Report was greatly appreciated both by the British statesmen and writers. P.E. Roberts observed, "It will always stand out as one of the greatest of Indian state papers". In the opinion of C.H. Philips, the Simon Commission Report constituted by far the most realistic analysis down to that time of the Indian problem. The Indians, however, did not attach any importance to the Simon Report. The nationalists condemned it as a reactionary document. The general feeling in India about the report was that it had simply added 'one more work in the library of British political science.' Nevertheless, the Report was not completely devoid of utility and significance. Many of its recommendations were ultimately incorporated in the 1935 Act.

All Parties Conference and Nehru Report, 1928

Before the appointment of the Simon Commission, Lord Birkenhead had tauntingly observed that the Indians themselves could not produce a constitution acceptable to all the interests of their country. This declaration of the Secretary of State was a direct challenge to the Indian statesmanship. Hence, while the Simon Commission was being accorded cold receptions the Congress leaders were tempted to take advantage of this favourable atmosphere for framing an agreed constitution. An all parties conference was convened by them at Delhi for the purpose. There was a good response from the other parties. The Liberals, the Hindu Mahasabha and the section of Muslim League led by Jinnah, all co-operated. The delegates assembled instituted a small Committee with Pandit Moti Lal Nehru as its President to determine the principles of the constitution. The leaders of the eminence of Sir Tej Bahadur Sapru and Sir Ali Imam were also on the Nehru Committee.

The report of this Committee, known as Nehru Report of Nehru Constitution, was published in August, 1928. Its main recommendations were : (a) Dominion Status and not Independence was India's political objective ; (b) India was to be a secular state with no state religion ; (c) the separate electorates were to be discarded in favour of joint electorates with reservation of seats for the

*They recommended for a Governor-General, who would have become more powerful than Shah Jehan and more irresponsible than Shah Alam. Sir Shaffaah Ahmed Khan : *Indian Federation* P. 19.

Muslims at the Centre and in the Provinces, where they were in minority ; (d) An all India Federation was the only constitutional remedy to drive out the 'evils of autocracy and compartmentalism from Indian politics'.

The Nehru Report was not only a suitable reply to Birkenhead's challenge, but also it offered an equitable basis for Hindu-Muslim co-operation in striving for national freedom. In the words of M.V. Pylee, "The Nehru Report was one of the most constructive efforts made by any organization in India.....Its proposals were conceived in a spirit at once of idealism and accommodation, and there was width, warmth and largeness in the edifice upon which some of the most brilliant sons of India showered their blessings".* But, unfortunately, the proposals of the Nehru Report did not receive the consideration they deserved both from the Muslim League and the Government. Even the Congress leaders were divided over the question of India's political objective. Pandit Jawahar Lal Nehru and Subhash Chander Bose called for unqualified Independence and not Dominion Status. To bridge this division in the Congress ranks, Mahatma Gandhi produced a compromise formula, which accepted the Nehru Report in its entirety, provided the British Government accepted the Report as a constitution for India before the end of 1929. In the absence of such acceptance, he proposed another mass civil disobedience movement.

First Round Table Conference

The British Government did not accept the Nehru Report as the constitution for India but it definitely realised the urgency of the matter. Lord Irwin, thereupon, issued a declaration inviting representatives of all sections of opinion in India (including those of the princely states) to a Round Table Conference in London. The Conference was to think over India's constitutional problem in the light of the recommendations made by the Simon Commission. According to Frank Moraes this declaration was significant in so far as it sought to break away from the old tradition, which required each stage of Indian development to be investigated and dictated by London.† The Congress welcomed the Viceroy's declaration but wanted the Round Table Conference to proceed on the basis of Dominion Status. Since Lord Irwin regretted his inability to give any such assurance, the Congress refused to

* Pylee M.V. : *Constitutional Government in India* P. 91.

† Moraes Frank : *Jawahar Lal Nehru* P. 144.

attend the Conference. Mahatma Gandhi launched the civil disobedience movement and alongwith thousand other congressmen went to prison. The Congress at its Lahore session of 1929 proclaimed 'Independence' and not 'Dominion Status' as its political objective.

In spite of great unrest in India, the first Round Table Conference was opened at St. James Palace, London on November 12, 1930. Of the 89 delegates, who assembled there, 57 were from British India. The Indian states were represented by 16 persons including Sir Mirza Ismail, Sir Akbar Hydari and the Maharajas of Bikaner and Patiala. Most of the delegates from India were the nominees of the Governor-General and were opposed to the Indian national movement. Since Congress was the only large and well organized political party, its absence from the Conference was quite conspicuous. It reduced the Conference into a mere farce. The delegates wasted their time and energy in asserting their claims and counter-claims and could achieve nothing. To quote Dr. Ishwari Prasad : "After nine weeks of vague and rapid talks the first Round Table Conference concluded its labours after having achieved nothing except the international advertisement of India's communal differences."*

Gandhi-Irwin Pact, March, 1931

The British Government, no doubt, held the Conference without the Congress, yet it found it necessary to ensure its representation at the next Conference. The Prime Minister, therefore, at the end of the Conference held out the hope that the Congress would discontinue the campaign of disobedience and participate in the Second Round Table Conference. He promised to grant substantial concessions to India in the near future. The need for an amicable settlement with the Congress was also dictated by the international situation, the economic crisis, the advance of Russia in China and the developments in Italy under Mussolini.

The conciliatory speech of the Prime Minister was followed by an unconditional release of the Congress leaders. Soon after, Gandhiji sought an interview with the Viceroy, which was readily granted.† The talks that ensued between the two states-

*Dr. Ishwari Prasad : *History of Modern India* P. 429.

†Mahatma Gandhi sought this interview on the persuance of Sapru, Jayakar and silver-tongued Srinivas Sastri who argued that it was the first tenet in the creed of ■ *Satyagrahi* to probe every avenue of peace.

men lasted for over two weeks and resulted in the Gandhi-Irwin Pact. According to this settlement (a) the Congress was to discontinue the civil disobedience movement and then participate in the Second Round Table Conference ; (b) the Government, on its part, was to release all political prisoners and withdraw all its repressive ordinances and notifications.

Second Round Table Conference, 1931

The Second Round Table Conference met in September, 1931. Gandhiji attended it as the sole representative of the Congress.* Mr. M.A. Jinnah represented the Muslim League. The spokesmen of the Indian states also participated. No sooner did the Conference begin its deliberations than there started conspiracies among the die-hards to make Gandhiji's mission a failure. The uncompromising attitude of Mr. Jinnah, the high pitched demands of Hindu Mahasabhaites and the unwillingness of the Government to part with power, foiled all chances of settlement. Gandhiji came back disappointed and revived the civil disobedience movement.† For, the Government in his absence had taken very severe action in U.P., Bengal and North-West Frontier Province. Many Congress leaders including Khan Abdul Ghaffar Khan, Dr. Khan Sahib, Jawaharlal Nehru and T.A.K. Sherwani had been put behind the bars. The country was again plunged into disorder and turmoil. Gandhiji was also sent to prison.

Communal Award, 1932

As the Second Round Table Conference had failed to arrive at a settlement of the communal question, the British Prime Minister, Lord Ramsay MacDonald gave his own decision known as 'Communal Award'. The Award aimed at separatism. It provided separate electorates or reservation of seats for every conceivable interest and section—the Hindus, Muslims and Sikhs,

*The strength and weakness of Gandhiji as the sole representative of the Congress is discussed by Subhash Chandra Bose : *The India Struggle* P, 247

†When Gandhiji came back to India, he told his followers : "I admit that I have come back empty-handed, but I am thankful that I have not lowered or in any way compromised the honour of the flag that was entrusted to me." According to Frank Moraes, "Politically, his mission had failed, and Hindu-Muslim divisions, on the constitutional plane had intensified.

(Jawaharlal Nehru P. 191).

Europeans, landholders, labour, commerce and women. The worst part of this Award was that it attempted to dismember the Hindu community by giving separate representation to the Depressed Classes. This division between the Hindus and the depressed classes, as contemplated by the Award, was a bomb-shell for the nationalists. Gandhiji, though in prison, started his fast unto death against this anti-national and immoral measure. The Government did not take a serious notice of his fast and Gandhiji's condition considerably deteriorated. His appeal to the British Prime Minister for a change in the Award proved ineffective. Gandhiji's life was in a great danger. At last, the Indian leaders including Pandit Madan Mohan Malaviya, Dr. Rajendra Prasad, C. Rajagopalancharia, Dr. Ambedkar met at Poona to find out a solution of the situation. Their deliberations continued for six days and resulted in the Poona Pact. The British Government subsequently accepted the Poona Pact and modified the Communal Award in accordance with its terms.

Poona Pact, 1932

The Poona Pact mainly dealt with the reservation of seats and candidatures for the Depressed Classes. Under this Pact (a) the Depressed Classes abandoned the separate electorates in favour of joint electorates. (b) One hundred and forty-eight (148) seats in the different Provincial Legislatures were reserved for them in place of seventy one (71). (c) Eighteen per cent of the seats in the Central Legislature, which were allotted to the general electorates for British India were also now reserved for the Depressed Classes. (d) As regards the system of election to the reserved seats, it was provided that the Depressed Class voters would first elect a panel of four candidates for each seat from which final selection would be made by the general election of voters. (e) The Depressed Classes were to be given fair representation in the local bodies and public services too.

The critics of the Poona Pact are of the view that Ambedkar, the chief leader of the Depressed Classes, exploited the situation to their great advantage. They secured double the number of seats reserved for them in the Communal Award and enjoyed the benefit of separate electorates at the primary stage. The Hindus had to make great sacrifice for saving the life of Gandhiji. The Hindus of Bengal were particularly pained over the settlement for, there was no problem of 'Untouchables' in their province. Moreover, the

Pact had not completely done away with the basic evil. It contained in itself the provision of separate electorates, though in a modified form.

Third Round Table Conference, 1932

While Gandhiji and most of the Congress leaders were in jails, the British Government held the third the Round Table Conference. The participation of the Congress was out of question. The Labour Party in England also did not take part, because its nominees were not acceptable to the Government. Though representatives of some sections from India attended the deliberations, yet the Conference could not achieve the desired success. In the words of A. C. Banerjee, 'The emergence of the federal idea, the idea of creating an Indian Federation consisting of British Indian Provinces and the Indian States was the only tangible achievement'.

The White Paper and the Government of India Act, 1935

On the basis of the discussions at the Round Table Conferences the British Government prepared their reform proposals, which were published as a White Paper.* This White Paper was submitted to a Joint Select Committee of the British Parliament for examination and report. The Indian assessors like Sir Tej Bahadur Sapru and M. R. Jayakar also participated in the deliberations and Lord Linlithgow acted as the Chairman of the Committee. The Joint Parliamentary Committee in its report recommended a few minor changes in the White Paper proposals. A Bill, churned out of the White Paper and J. P. C. Report, was introduced in Parliament in December 1934. It got the Royal assent on August 4, 1935. It came to be known as Government of India Act, 1935.

SECTION II

FEATURES OF THE ACT

The Government of India Act, 1935 was a long, complex and confusing document. It ran into 451 clauses with 15 schedules. The Act, broadly speaking, dealt with two main subjects : the introduction of 'Provincial Autonomy' and the establishment of an

*There was, however, nothing 'white' about the decisions, which were further stiffened by a 'powerful' Parliamentary Committee, which, like the ill-fated Simon Commission, was an exclusive body."

Kulkarni V. B. : *British Dominion India and After* P. 222.

All India Federation.* And these two subjects were closely interlinked. Its other important features were consequential. It was, however, interesting that some of its clauses did not even touch the problems of purely constitutional character. The principal features of this Act maybe summed up as under :

(a) *All India Federation*

The Government of India Act, 1935 envisaged an All India Federation. It was to consist of eleven Governors' Provinces, six Chief Commissioners' Provinces and of such Indian states as would agree to accede to it. Accession to the Federation under the Act was compulsory for the Provinces and voluntary for the Indian states. Each state joining the Federation was to sign an Instrument of Accession, detailing the powers which it would like to delegate to the Federal Government. The federating units were to be autonomous within their own sphere and there was to be a Federal Court to decide matters of dispute between them and the Federal Government.

The Federal Government was to consist of Federal Executive and Federal Legislature. The executive head of the Federation was to be His Majesty whose authority was to be exercised on his behalf by the Governor-General. His authority was to extend to all matters in which the Federal Legislature had power to make laws and to the raising of forces. It was also to extend to the exercise of such rights as were exercisable by His Majesty by treaty, grant and usage. The Federal Legislature was to consist of two houses, known as the Council of State and Federal Assembly. The Princes were allowed to nominate their representatives for both legislative chambers. They were given one-third of the seats in the lower and two-fifths in the upper house. The Federal Legislature was to have the power to legislate on all matters included in the Federal List, subject to the powers and special responsibilities of the Governor-General.

The Indian Federation was to come into being if the following two conditions were fulfilled : (a) the states joining the Federation

*The All India Federation could not come into being, owing partly to popular opposition (including that of the Princes) and partly to the outbreak of the Second World War in 1939. The rest of the Act came into force partly on July 3, 1936, when the electoral provisions began to operate and completely in 1937.

possessed not less than half of the total population of states ;
 (b) the rulers seeking accession were entitled to choose 52 members for the Federal upper chamber.

(b) *Provincial Autonomy*

The 1935 Act provided for each of the eleven provinces of British India a system of government popularly referred to as 'Provincial Autonomy.' From the Indian point of view, it was the most distinguished feature of the new Constitution. Speaking in the Second Round Table Conference in 1932, the British Prime Minister, Mr. Ramsay MacDonald had said that under this system the Governors' Provinces would be responsibly governed units enjoying the greatest possible measure of freedom from outside interference and dictation in carrying out their policies in their own sphere. The Joint Select Committee was of the view that 'Provincial Autonomy' was a scheme whereby each of the Governors' Provinces would possess an executive and a legislature having precisely defined spheres, broadly free from control by the Central Government and Legislature.

The Provincial Autonomy, as introduced by the Constitution Act of 1935, gave an independent and autonomous status to the British Indian Provinces. Dyarchy was abolished and all the provincial departments were transferred to the Indian Ministers, who were responsible to the legislatures. Thus, the Provincial Ministries became powerful political units having effective control over the entire field of provincial government. The Governor in each Province was to select the Ministers in consultation with the person having stable majority in the legislature. He was to carry on the government in accordance with the advice of the popular Ministers. Besides, the Governor was expected to foster a sense of joint responsibility among the Ministers. The Indian public hoped that the provinces would have substantial freedom to perform the functions given to them under the Act without interference from above. To sum up, the 'Provincial Autonomy' provided for a fairly substantial system of cabinet government in action. It brought about a definite improvement in the status and powers of the British Indian Provinces, their popular Ministers and provincial legislatures.

The authors of the Act had genuine fears that the provincial governments might face difficulties on account of the acts of

ommissions and commissions on the part of the Provincial Ministers. So they gave certain special responsibilities to the Governor in respect of seven subjects, such as : (a) prevention of any grave menace to the peace and tranquillity of the Province; (b) safeguarding the legitimate interests of the minorities, Public Services, (c) securing the execution of orders and directions issued by the Governor-General on his discretion. The Provincial Governors were also vested with the adequate legislative and administrative powers for the proper discharge of their special responsibilities.

(c) *Dyarchy at the Centre* *Dyarchy at the Centre*

The British statesmen were of the opinion that the successful functioning of the 'Provincial Autonomy' necessitated the introduction of partially responsible government at the centre. Hence, the discredited dyarchy, which had been abolished in the provinces, was specially imported into the centre. The Federal subjects were divided into 'Reserved' and 'Transferred' subjects. The former covered Defence, Ecclesiastical Affairs, External Affairs and Administration of Tribal Areas. These subjects were to be administered by the Governor-General in his discretion. He could, however, appoint some councillors, not exceeding three in number, to assist him in this connection. These Councillors were responsible to the Governor-General and their's was purely an advisory function. In the discharge of these functions, the Governor-General was responsible to the Secretary of State and through him to the British Parliament.

The 'Transferred' subjects were to be administered by the Governor-General on the advice of a Council of Ministers, consisting of not more than ten persons. The Ministers were to be appointed by the Governor-General from amongst the members of the Federal Legislature to which they were collectively responsible. The Governor-General was expected to select his Ministers in consultation with the person commanding stable majority in the Legislature. He was also required to include in the Federal Ministry, so far as practicable, the representatives of the federating states and members of the important minority communities. The Governor-General was expected to act as the constitutional head in relation to the powers transferred to the control of the Council of Ministers, but his powers even in this field were far greater than those of a constitutional head. He had a number of special responsibilities. He was directed to

act on his discretion in some matters and in others to exercise his individual judgement. These powers made him very powerful in relation to the Ministers.

(d) *Reconstitution of Provincial Legislatures*

Under the Constitution Act of 1935, some important changes were effected also in the Provincial Legislatures. In six out of the eleven provinces (Bombay, Bengal, Madras, Assam, Bihar and U.P.) the legislatures were made bicameral, having Legislative Council and Legislative Assembly as their two chambers. The legislatures of the remaining five provinces had only one house known as the Legislative Assembly. The strength of the Assemblies was greatly enlarged. The smallest of them had 60 members (N.W.F.P.), while the largest one consisted of 250 members (United Provinces).^{*} The increase in the membership of the legislative assemblies reduced the size of the constituencies. This was a change for the better. Besides, there was a wide extension of the franchise. It was extended from the seven millions of 1919 to about 36 millions, including six million women and about ten per cent of the 'Depressed classes'.[†] About 15% of the total population of the Provinces was enfranchised. It was, however, sad that the 1935 Act not only retained the separate electorates for the Muslims but also extended them to the Sikhs, Indian Christians, Anglo-Indians and Europeans.

(e) *Distribution of Powers*

The 1935 Act had been enacted to establish in India a federal system. It was, therefore, essential to demarcate the respective spheres of the federal and provincial governments. To achieve this object, the Act made a thorough distribution of powers. Three exhaustive lists of the legislative powers viz. Federal, Provincial and Concurrent, were prepared. The Federal List contained 59 subjects including defence, external affairs, communications, currency, coinage etc. etc. Since subjects of this list were of all-India concern and needed a uniform policy, the Federal Legislature alone had the power to make laws in respect of them. There were 54 items in the Provincial List. It covered subjects mainly of local interests such as education, public health, law and order, land revenue and local self-government. The Provincial Legislatures were

^{*}The Punjab Legislative Assembly had 175 members.

[†]The Harijans had been generously rewarded under the Poona Pact.

competent to pass legislation on all matters included in this list. The Concurrent List had 36 subjects including criminal law and procedure, civil law and procedure, newspapers, books and presses, trade unions, unemployment, insurance, electricity etc. Both the Federal and Provincial Legislatures could make laws on these subjects. In case of ■ conflict between the two authorities, the law of the Federal Government was to prevail. An interesting feature about this distribution of powers was that the residuary legislative power was vested neither in the Centre nor in the Provinces. It rested with the Governor-General, who, at his discretion, could empower the Federal Legislature and the Provincial Legislatures to enact a law in respect of any matter not enumerated in either of the two lists mentioned above.

(f) *Federal Court*

In anticipation of the completion of the federal structure, a Federal Court was set up at Delhi to adjudicate inter-state disputes and matters concerning the interpretation of the Constitution Act of 1935. It was to consist of at least three judges—a Chief justice and two associate judges. The judges were to be appointed by the Crown and were to hold office until they completed the age of sixty-five. The judges of a High Court with five years of experience or lawyers of an Indian High Court having ten years' standing were eligible for the post of a judge in the Federal Court. The Federal Court at Delhi had three different kinds of jurisdiction—original, appellate and advisory. The striking feature about this Court was that it was not the final or ultimate interpreter of the Constitution Act. Appeals could be taken to the Judicial Committee of the Privy Council from the Federal Court. This was a serious limitation on its powers. In spite of this weakness, the Court proved to be the most successful in operation. According to Prof. Spear, the appointment of Sir Maurice Gwyer, a principal draughtsman of the Act, as the first Federal Chief Justice, gave to India a wise counsellor, both during his term of office and for many years afterwards'.

(g) *Safeguards and Reservations*

In addition to the British statesmen of the time, the Indian Princes and Musalmans were also opposed to the democratic rule in British India. The Indian Musalmans, being ■ minority community, did not find the majority rule in their interests. The

Princes had the fear that their subjects might draw an inspiration from British India and then make a demand for a democratic set-up in the states. Taking advantage of the apprehensions of these conservative forces, the authors of the Act made provision for a series of safeguards and reservations. Some of them were included also on the ground that they were essential for the success of responsible government in India.

The truth of the matter is that the safeguards provided in the Constitution were intended primarily to protect the interests of the British in India. They constituted a clever device for the continuance of the British rule in India. The more significant among the numerous safeguards were the Governor-General's discretionary powers, which had been couched in about 100 provisions of the Act. Besides, there were numerous reservations with regard to Defence, External Affairs, Finance, Currency etc. The special responsibilities of Governor-General and Governors in respect of seven subjects also constituted a significant part of the safeguards provided in the new Constitution.

(h) *Extension of the system of communal electorates*

The authors of the Montford Reforms were of the view that any system of communal electorates was 'a very serious hindrance to the development of the self-governing principle.' They had written in their Report that 'any general extension of the communal system would only encourage still further demands and...would be fatal to the development of representation on the national basis, on which alone a system of responsible government can possibly be rooted'. But despite this considered opinion of the British statesmen, the Communal Award of 1932 had transformed the Indian electorates into disparate groups divided between the Hindus, Muslims, Sikhs, Anglo-Indians, Indian Christians, landlords, capitalists, etc. This undemocratic handiwork of the British Prime Minister (Ramsay MacDonald) was incorporated in the Act of 1935, making it difficult for the Indians to work in unison for the national interests.

(i) *Abolition of India Council*

The continued existence of the India Council had been for long a subject of bitter criticism. The 1935 Act abolished it for ever. The Secretary of State was empowered to appoint (in its place) not less than three and not more than six persons to advise him on matters referred to them by him. One half of these advisers were

required to be persons, who must have served for at least ten years under the British Crown in India and must not have relinquished their office more than two years before the date of their appointment. They were to hold office for a term of five years and were not eligible for reappointment. They could, however, resign their office to the Secretary of State before the expiry of their term. The latter could also remove them on the ground of infirmity of mind or body. The advisers were to be paid out of the money provided by the Parliament and each of them was to draw £ 1,350 as his annual salary. Those domiciled in India at the time of their appointment were given an annual allowance of £ 600/-. No adviser could sit or vote in either House of Parliament. The Secretary of State was not bound to accept their advice.

On account of the changes envisaged in the central as well as provincial governments, the Secretary of State was required to relinquish some of his powers. But the new situation did not materially affect his position. For, (i) all the powers of the Crown in relation to India were to be exercised on his advice ; (ii) he was not bound to refer any matter to his advisers or to accept their advice on matters so referred, (iii) he could even now control the Governments of India through the special responsibilities of Governor-General and Governors.

(j) Administrative changes

Under the Constitution Act of 1935, the provinces of British India were re-arranged. Sind was detached from Bombay and created into a separate province (on purely communal grounds) to increase the number of Muslim majority provinces. Orissa was taken from Bihar to form a new province with portions of Madras and the Central Provinces. Besides, Burma was separated from India and Aden was transferred from the administrative control of the Government of India to that of the Colonial Office. In consequence, Burma became a separate country and Aden assumed the status of a Crown colony.

(k) Supremacy of the British Parliament

The supremacy of the Parliament over British India was reasserted in the Act of 1935. It was expressly provided that no legislature, provincial or federal, could make any law affecting the matters or issues definitely connected with the sovereignty. They could, however, recommend changes under certain prescribed conditions and that, too, only in some specified matters. The right

to amend, alter or repeal the constitutional law remained vested in the Parliament.

(1) *Absence of Preamble*

Originally, the Government of India Act, 1935 had no Preamble and it was even passed without it. The omission of the Preamble was due to the fact that the authors of the Act felt no need for it, as no new pronouncement of policy or intension was required. At the same time, to affirm that the British Government still held the Dominion Status (implied in the Act of 1919) as its ultimate objective, the Preamble to the Act of 1919 was kept intact, although the Act of 1919 itself was repealed. The absence of the Preamble was significant in so far as it set this Act apart from other Acts, which had been passed by the British Parliament with reference to constitutional reforms in India.



EVALUATION OF THE ACT

The Government of India Act, 1935 met with a wide and universal condemnation. Almost all the political parties of India, for one reason or the other, bitterly denounced it. Mr. M.A. Jinnah, the Muslim League leader, characterised it as 'fundamentally bad, thoroughly rotten and entirely unacceptable'. Pandit Madan Mohan Malaviya, a Congress patriot, held the view that 'the new constitution was democratic from without but hollow within.' In the opinion of Pandit Jawaharlal Nehru 'it was not worth the paper on which it had been printed'.* He also observed that 'the Act is new Charter of Slavery'. Sir C. Y. Chintamani in his critical analysis of the 1935 Act described it as 'the anti-India Act'. In short, the new Constitution was unacceptable to the bulk of the Indians, though it was later on thrust upon them.

The Constitution Act of 1935 did not evoke any enthusiasm even in Britain. A powerful section of the Conservatives believed that too much was being given to Indians, while many in the Labour Party thought that the Act did not go far enough to satisfy the Indian aspirations. Mr. Winston Churchill, a vigorous critic of

*In a publication issued under the auspices of the Congress we read : It (the Act of 1935) is a prodigy of imperialist statesmanship. It is an elaborate and ingenious device to frustrate the emergence of a free India and to secure, so far as constitutional provisions can secure, the continuance of British rule in circumstances totally different from those prevailing at the time of its establishment.

the Act, denounced it as 'voluminous but not luminous' and a 'work of pigmies'.

Peculiar and defective Federation

The All India Federation, as proposed by the Act of 1935, possessed some normal characteristics of a good federal system viz., the distribution of powers between federal centre and federating units, impartial tribunal and a rigid and written constitution. Yet, it had some peculiarities of its own, which gave it the appearance of an abnormal federal structure. In the first place, this federal scheme contemplated to unite two or three dissimilar types of units (provinces, states etc.) having marked disparities among themselves in regard to their areas, populations, resources and systems of administration. The federating units also did not have the same status, powers and traditions. The combination of such disparate units was sure to prove a drag on the constitutional progress of British India. Secondly, the proposed Federation was intended to favour the Indian States, at the cost of the Provinces. The leaders in the Indian political life were fully aware of the British intention. The Muslim League did not hesitate to observe that the proposed federal scheme was to be the most reactionary, retrograde, injurious and fatal to the vital interests of British India vis-a-vis the Indian states. It was also pointed out that the Federation was a clever attempt to buttress feudal elements to hold in leash progressive and nationalist forces.' Thirdly, the federal scheme did not envisage any real transfer of power to the Indians. It was obvious from the dictatorial position of the Governor-General, who exercised exclusive control on all important activities of the federal government. Fourthly, the provisions relating to the amendment of the Constitution were sufficiently rigid and complex. Fifthly, the federal government did not have identical range of powers over all the constituent units of the federation. On the contrary, the range of the federal powers differed from one unit to the other. Finally, contrary to the general practice in the other federations of the world, the proposed Federation vested the residuary power in the Governor-General. This was a particularly objectionable feature, as it made the executive authority, and not the Constitution, the supreme power in the Federation. Sir C.Y. Chintamani aptly remarked : "We are given a limp federation full of undesirable features, ill-balanced between the states and the provinces and denied powers, which are

vital to every government worthy of the name.”* The Congressmen also expressed the apprehension that the federation was ‘designed to facilitate and perpetuate the domination and exploitation of the people of India.’

Provincial Autonomy—A Farce

*Thousand of
Counter Acts*

The Provincial Autonomy, held to be great concession to the Indians, was in reality a mere farce. The two essential characteristics of the ‘Provincial Autonomy’ viz., freedom from external control and responsible government within the province, were deliberately denied. The special responsibilities of the Governor-General and Governors, couched in vast and vague terms, reduced it to a mere mockery. For instance, law and order were professed as a transferred subjects and were, therefore, placed under a responsible Minister. But, at the same time, they were ‘kept quite safe under the double lock of the special responsibility of the Governor-General and the Governor with regard to the preservation of peace and order. In other words, on the plea of their special responsibility to prevent any grave menace to the peace and tranquillity of India or any part of thereof, the Governor-General and Governors could take with one hand what was given with the other. They could take any step they liked to wipe out the terroristic activities, to crush revolutionary crimes and suppress the Civil Disobedience Movement in open defiance to the wishes of the Ministers.

Besides, the pivot of the entire provincial administration was not the Chief Minister but the Governor. He was clothed with a plenitude of arbitrary powers, which made the position of the council of ministers very ineffective. He was to act on his discretion in certain matters and to exercise his individual judgement in others. He was given special responsibilities with regard to seven subjects. Besides, he was empowered to give his assent to a bill or withhold it or reserve it for the consideration of the Governor-General. He could even issue ordinances both during the session of the legislature and when it was not in session. He could enact ‘Governor’s Act,’ if he felt that such a measure was necessary for the discharge of his duties. So far so that the Governor could brush aside the entire constitutional structure and assume the direct administration of the province, if he so desired. His power over the purse was equally absolute. Thus, the ‘Provincial Autonomy’ gave more autonomy to the Governor than to the people or their

*Chintamani and Masani : *India’s Constitution at Work* P. 202.

ministers. Dr. Rajindra Prasad aptly remarked : 'It would be a mere camouflage and a fraud to declare that such and such subjects had been transferred, when the responsibilities with regard to them were reserved with the British. The wide powers, vested in the Governor, Governor-General and also in the Crown and the Parliament, negatived the very essence of the provincial autonomy, the great prize awarded to the Indians'.*

Injurious Safeguards and Reservations

The principle of safeguards was, no doubt, accepted by Mahatma Gandhi. It was also supported by Sir Tej Bahadur Sapru in the Second Round Table Conference. The Indian leaders had no objection to the incorporation of such safeguards in the new Constitution as would be in the interests of both India and England. But the authors of the Act, in their efforts to secure the British interests, buried the new Constitution under the dead weight of such numerous safeguards and reservations as were harmful to the Indian interests. For instance, it was contended that the proposed federal scheme was designed to protect the Muslims against the oppression of the majority and the rulers of the states against the fast-spreading virus of democracy. But, in reality, the Federation was devised in the hope that mutual jealousies and rivalries between the Congress, the Muslim League, and the Rulers of states would enable the British to retain their authority by playing off one against the other. Similarly, the safeguards to protect the interests of the Civil Services were devised to take away all that was left in the 'Provincial Autonomy.' To quote Dr. Rajindra Prasad, "These safeguards were devices to create disputes and deadlocks to discredit Ministersand demonstrate to the world that responsible government could not function properly in the hands of the Indians". To sum up, the safeguards incorporated in the new Constitution were meant to save the imperial, commercial and economic interests of the British. They had very little to do with the vital interests of India. Rather, they were injurious to them.

No relaxation of the control of the Secretary of State

The Government of India Act, 1935 did not relax the control of the Secretary of State over India. As before, he remained the 'Great Mughal of Whitehall'. Through his control over the Governors and Governor-General he continued to dominate every aspect

*Dr. Rajindra Prasad : *Presidential Address at Bombay 1934.*

of administration till the partition of India in 1947. It is rightly observed that 'Prior to 1947, India was governed neither from Delhi nor from Simla but from Whitehall'.

No provision for the growth of the Constitution

The critics of the Act also pointed out that it had no provision for an automatic growth of the new Constitution. Everything was to depend on the will of the British Parliament. Nothing was to be adjudged by the Indians themselves. Even the proposed Federation could not come into existence without a second vote of the House of Parliament. Besides, the Act, according to Mr. Attlee, had 'no work time-table of the political progress in India'. It was because of this shortcoming of the Constitution that the Act was looked upon as a temporary measure. As such, the Act had all the disadvantages and none of the advantages of a permanent constitution. According to V.B. Kulkarni, "The Act was in fact an eloquent essay in the *status quo*. India was treated like a vast mansion, in which the minorities, the princes, foreign vested interests, and a powerfully entrenched bureaucracy were encouraged to find a hospital home.*"

It was a communalism-ridden Constitution

The Constitution Act of 1935 was a communalism-ridden one. In the words of Prof. Spear, 'Communal representation, a vintage of the 1909 reforms, ran right through the Constitution, both of the legislatures and Public Services. The recognition of the principle of communal representation in the case of a number of small communities gave a deadly blow to the national unity and encouraged the forces of disintegration.

It was a belated measure of the British Government

The 1935 Act is also criticised as a belated measure of the British Government. Prof. Norman D. Palmer writes : "If it had been enacted a generation before, it would have been hailed as a welcome step along the road to self-government. In the temper of the mid-1930's with nationalist movement a growing force in the Indian scene, the Act was regarded as wrongly motivated and inadequately conceived."

A marked improvement on 1919 Act and a blue print for Independence

The Indian politicians of the time were almost unanimous in

*Kulkarni, V.B. : *British Dominion in India and after* P. 226.

condemning the Act of 1935 as 'a prodigy of imperialist statesmanship'. But some British statesmen, including Sir Maurice Gwyer, Lord Lothian and L.S. Amery, had all praise for it. Sir Maurice Gwyer, the chief draftsman of the Act, optimistically observed that the Act had set India upon the path of responsible government. It would promote the realization of her ambition in that respect. Used well, the Act would transform India into a Dominion within a period of ten years. Lord Lothian, another architect of this Act, also wrote : 'The core of the Act is that the centre of political gravity will pass from British to Indian hands'. He also expressed the hope that in spite of the safeguards, conventions would soon create Dominion self-government in India. In the opinion of Amery 'the Act was a remarkable feat of constructive statesmanship'. Even Prof. Spear looked upon the Act as a farsighted document, which not only marked a decisive improvement upon the Montford Reforms but also merited the title of prelude to independence. Comparing the Montford Reforms with the Constitution Act of 1935, he writes : 'They (Montford Reforms) had left the ultimate goal hazy and with their periodic inquiry, the next step uncertain. Dominion status was now the accepted goal, federalism the accepted frame-work, and parliamentary institutions the accepted form of government. Provision was made for changing the Constitution from within. Besides, in Britain, the Act represented a new consensus in India in a way the 1919 Act can hardly be said to have done'.*

SECTION III

ALL INDIA FEDERATION

The Government of India Act, 1935 envisaged a scheme of All India Federation, which exhibited some normal characteristics of a good federal system. It had a written constitution with a rigid process of amendment. There was division of powers between the federating units and the federal government. Also, a Federal Court was provided to secure the due observance of limits placed on the federal authority and the constituent units. But, at the same time, the proposed Federation was sufficiently distinct from the other federal constitutions of the world. Some of its features were quite peculiar, rather abnormal. The peculiarities of this federal scheme were primarily due to the fact that the impulse and motive towards

*Spear : *A History of India* P. 208.

the federation came not from the Indians but from the British Parliament. To quote G.N. Joshi, "The federal policy, embodied in the Act of 1935, was not a natural and inevitable outcome of the political evolution of India, but was a measure evolved by the British Parliament to achieve certain objects, which could only be secured by a political system, that contained in itself checks and balances'.

(a) *The Units of Federation (States, Governors' Provinces and Chief Commissioners' Provinces)*

The Federation proposed under the 1935 Act was to consist of eleven Governors' Provinces, six Chief Commissioners' Provinces and of such Indian States as would accede to it.* Obviously, the Federation was to be a union of two or three dissimilar types of units, differing in area and population, resources and systems of internal administration, and also in their status and powers. To make it more explicit, the British Indian Provinces enjoyed a measure of democratic government ; their people held progressive views ; they also possessed certain civic and political rights. Besides, under the scheme they were to send elected representatives to the Federal Legislature.

The conditions prevailing in the states were, however, altogether different. All of them were governed by autocratic rulers, who were deadly opposed to the democratic set-up and traditions. Like the ruling princes of the time, the people in the states were also reactionaries. They did not possess any civil or political rights nor did they know anything of the principle of election and representation. The states' representatives to the Federal Legislatures were to be appointed by their rulers and not elected by the people. Thus, the proposed Federation was to be a strange agglomeration of semi-democratic provinces and despotically ruled states ; of progressive elements and conservative ones ; and of units varying in size, population and importance.

(b) *Accession to the Federation (Instrument of Accession)*

The accession to the Federation was compulsory for the provinces and voluntary for the states. But the states, acceding

*(i) The Governors 'Provinces were Bengal, Bombay, Madras, Assam, Bihar, Orissa, The Punjab, The Central Provinces, The United Provinces, the N. W. F. Province, Sind (ii) The Chief Commissioners, Provinces were—Delhi, Ajmer-Merwara. The Andaman and Nicobar Island, Coeng, British, Baluchistan and Panth Piploda.

to the proposed federation, were required to signify their assent by an Instrument of Accession to be executed separately by each of the rulers of the states for himself, his heirs and successors. The Instrument of Accession was a sort of document, which laid down the conditions under which a particular member was willing to join the proposed federation. It also specified the matters with respect to which the Federal Legislature was to have the power to legislate for the state. The limitations under which the Federal Government (Legislature and Executive) was to exercise its authority and also to make laws for a state were also mentioned in the Instrument of Accession. After an Instrument of Accession duly agreed to and executed by the ruler of a state had been accepted by His Majesty, the state was to become a member of the federation, and the Instrument was to be an irrevocable binding on the ruler, his heirs and successors.

The scope of the federal intervention in a state acceding to the federation could not afterwards be curtailed. Of course, it could be enlarged by a supplementary Instrument of Accession executed by the ruler and accepted by His Majesty. Once the ruler of a state joined the federation, he had no right to secede even if he so desired. Thus, the Indian Federation, "was to be a perpetual and indissoluble union between the states and the provinces". Amusingly enough, under this federal scheme the subjects ceded to the federal authority by one state could be different from those ceded by another. Also, the range of the federal intervention was to be the same with regard to the British Indian Provinces, while it could not be so in case of states joining the federation.*

(c) *Inauguration of the Federation*

The All India Federation was to be inaugurated by Proclamation of His Majesty. This Proclamation was to be issued only if an address on that behalf was presented to His Majesty by the two Houses of Parliament and, further, if the following two conditions were fulfilled : (a) The states joining the Federation had not less than one half of the total population of the states, (b) The rulers of the states seeking accession were entitled to choose not less than half of the states representatives (52) for the upper house of the Federal Legislature.

*The Joint Parliamentary Committee observed that the rulers in general would accept the items I-48 in the Schedule No. 7 attached to the Act.

Evidently, the proposed federation was to come into being not as a result of any agreement among the federating units. Nor the people of the British Indian States were to have any voice in determining the conditions for their accession to the federation. All this was really unprecedented. Moreover, no time-limit had been prescribed for the inauguration of the Federation. The rulers were, of course, given a period of twenty years to make up their minds as to whether they would like to join the federation or not.

THE FEDERAL GOVERNMENT

The federal government, as contemplated under the Act, was to consist mainly of a Federal Executive and a Federal Legislature. It was also to have a Federal Court, the Federal Railway Authority, and a Reserve Bank as its other components.

The executive authority of the federation was to extend (a) to the matters with respect to which the Federal Legislature had the power to make laws, (b) to the raising in British India on behalf of His Majesty of naval, military and air forces, (c) to the exercise of such rights as were possessed by His Majesty by treaty, usage or any other lawful means in relation to tribal areas. The said authority was not ordinarily to extend (i) in any province to matters with respect to which the provincial legislatures were given the power to make laws, and (ii) in any federated state to matters with respect to which the federal legislature was not given the power to make laws by the Instrument of Accession.

(A) THE FEDERAL EXECUTIVE

The Federal Executive comprised (a) the Governor-General, (b) the Councillors and (c) the Council of Ministers.

The Governor-General

The Governor-General was made the key-stone of the federal edifice. In him was vested the executive authority of the federation and he was to exercise it on behalf of His Majesty either direct or through officers subordinate to him. He was the Governor-General of India with respect to the British India and as such, he was the head of the Federal Executive. His position in relation to the Indian states was that of the Crown Representative. In that capacity he was in charge of the use of the Royal Prerogatives and of the paramount authority in relation with the Indian

states. This dual role of the Governor-General made his position unique and powerful.

The Governor-General was appointed by His Majesty on the advice of the British Prime Minister generally for a period of five years. He drew an annual salary of Rs. 250,800 excluding a number of allowances, which were paid to him in order to maintain the dignity and pomp of his exalted office. About Rs. 1,800,000 were in all spent on the Governor-General every year and this huge amount was charged on the Consolidated Fund of India. No other official in the world ever received such fat emoluments.

His powers and various modes of exercising them

In view of his pivotal position, the Governor-General was armed with wide and varied powers which he exercised in three different ways : (i) powers to be exercised in his discretion ; (ii) powers to be exercised in his individual judgement ; (iii) powers to be exercised on the advice of the ministers.

(a) Powers exercised in discretion

In the exercise of these powers, the Governor-General was not bound to consult his Ministers. He could have their opinion if he so desired, but the Ministers had no right to tender advice to the Governor-General. The subjects or matters with regard to which he exercised his discretionary powers were as follows : (1) Defence, Foreign affairs, Ecclesiastical affairs and Tribal areas—the four reserved subjects for the administration of which he was responsible to the Secretary of State, (2) the choosing, summoning and dismissal of Ministers, (3) presiding at the meetings of the Council of Ministers, (4) appointing the Councillors, Financial Adviser and his staff ; the Chief Commissioners, the Governor and Deputy Governor of Reserve Bank, the Chairman and members of the Federal Public Service Commission, Directors and Deputy Directors of the Indian Railway Companies, the President of the Federal Railway Tribunal and three-sevenths of the members of the Federal Railway Authority. In some cases, he had also the power of removal. The power of determining the salaries, allowances, conditions of service etc. in respect of some high posts also rested with him. Thus, the Governor-General had a great political patronage at his disposal and this made him a very powerful figure in the country.

In addition to the powers enumerated above, the Governor-

General had the authority of making rules for (i) the convenient transaction of government business and the distribution of work among the Ministers, (ii) keeping himself informed, (iii) the authentication of the orders and instruments of the government. This rule-making power was significant in so far as it enabled the Governor-General to dominate his Executive Council. Besides, the Governor-General had the powers of summoning, proroguing and dissolving the lower House, sending messages regarding bills, disallowing the introduction of certain bills, refusing assent to some others. He had also the power of enacting Governor-General's Acts and promulgating ordinances and issuing emergency proclamations suspending the Constitution. The power of issuing instructions to the Governors acting on their discretion or exercising their individual judgement also fell in his jurisdiction.

(b) Powers Exercised in individual judgement (special responsibilities etc.).

These powers constituted a special feature of the Act and were necessitated on account of the transfer of power at the Centre. In the exercise of these powers, the Governor-General was bound to consult the Ministers, but it was not obligatory on him to accept their advice. From the nationalists' point of view these powers were less dangerous than those, which he exercised in his discretion, for the former gave an opportunity to the Ministers to influence the Governor-General. Section 32 of the Act gave him special responsibilities on the following seven subjects: (1) The prevention of any grave menace to the peace or tranquillity of India or any part thereof. (2) The safeguarding of the rights and legitimate interests of the Public Services. (3) The safeguarding of the legitimate interests of the minorities. (4) The safeguarding of the financial stability and credit of the federal government. (5) The prevention of commercial discrimination. (6) The protection of the rights of any Indian state and the rights and dignity of the ruler thereof. (7) The prevention of action, which would subject goods of United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment. (8) The securing of the due discharge of an action taken by him (the Governor-General) in his discretion or individual judgement.

(c) Powers to be exercised on the advice of the Ministers

Since a large part of administrative sphere was covered by the powers of the Governor-General acting in his discretion or in his individual judgement, a very insignificant field was left in which the Governor-General was to act on the advice of his Ministers. Though the powers of the Ministers, in this sphere were professed to be real, yet in practice they could not be effective. The special responsibilities of the Governor-General were couched in such vague and elastic terms that they made it difficult for the Ministers to exercise these powers unhampered.

Extra-ordinary Powers of Legislation

It is needless to detail the Governor-General's vast administrative, legislative and financial powers, most of which were involved in the exercise of his discretionary powers and right to act in individual judgement. However, a mention may be made of the extra-ordinary powers of legislation given to him under certain circumstances.

(a) Ordinances

The Governor-General could promulgate two kinds of ordinances :—

1. *Those that could be promulgated by the Governor-General during the recess of the Federal Legislature.* If the Legislature was not in session and an emergent situation arose requiring immediate action, the Governor-General could promulgate an ordinance on the advice of his Ministers or in the exercise of powers reserved for his individual judgement, if he deemed necessary. This ordinance was to have the full force of law, but was to be laid before the Federal Legislature. It would cease to have effect if it were not passed by it within six weeks of the commencement of the session.

2. *Those that could be promulgated at any time.* If at any time the Governor-General was satisfied that circumstances necessitated action for the satisfactory discharge of his discretionary functions or for functions with respect to which he was required to exercise his individual judgement, he might issue ordinances as the circumstances of the case might require. Any such ordinance could not remain in force for more than six months at a time. Of course, it could be renewed for a further period of six months by another proclamation.

(b) Powers of suspending the Constitution (Proclamation)

Under section 45 of the Act, the Governor-General was empowered to suspend the Constitution by a proclamation, if, at

any time, he was satisfied that the government of the Federation could not be carried on under the existing circumstances. In case of the failure of the constitutional machinery, the Governor-General could assume all or any of the powers vested in or exercisable by any federal authority except that of the Federal Court. The proclamation suspending the constitution was, however, to be communicated forthwith to the Secretary of State for India, who was to lay it before each House of the Parliament. Such a proclamation would cease to operate after six months, unless it was earlier revoked by another proclamation.

DYARCHY IN THE FEDERAL EXECUTIVE

Since the transfer of full responsibility at the Centre was not considered an advisable course, a dyarchiac executive was envisaged for the Centre. For that purpose, the federal subjects were divided into two parts—'Reserved Subjects' and 'Transferred Subjects'. The former included Ecclesiastical Affairs, Defence, External Affairs and administration of Tribal Areas. All the remaining subjects formed the 'Transferred Subjects'. The terms 'transferred' and 'reserved' were, however, not actually used.

(a) *Councillors*

The Governor-General assisted by his Councillors (not exceeding three in number) was to be the sole incharge of the reserved subjects. He was to be responsible in respect of their administration to the British Parliament. The Councillors were to be appointed by His Majesty but were to be responsible to the Governor-General alone. They were to be the *ex-officio* members of both the Chambers, but had no right to vote and were, in no way, responsible to the Federal Legislature. Their tenure and qualifications were not fixed and they had purely advisory functions.

(b) *Council of Ministers*

In the administration of the federal subjects other than the reserved ones, the Governor-General was to be assisted by a Council of Ministers responsible to the Federal Legislature. The strength of the Ministers was not to exceed ten in number. They were to be appointed by the Governor-General and held office at his pleasure. Only members of the Federal Legislature could be appointed as Ministers. Their salaries were to be determined by the Federal Legislature, and could not be reduced during their term of office.

The Governor-General was instructed to select his Ministers on the advice of the person, who was most likely to have a stable majority in the lower house of the federal legislature. He was directed to encourage the spirit of collective responsibility in the Council of Ministers. He was also required to include in the Federal Ministry, as far as possible, the representatives of minorities and of the Indian states. He was expected to act normally as a constitutional head in the transferred sphere. Nevertheless, the authority of the Ministers was subjected to many a limitation. The creation of the Reserve Bank and Federal Railway Authority, the special responsibilities of the Governor-General and his powers to overrule the Ministers, the provisions of the Act in respect of commercial discrimination etc., etc., all limited the scope of the Ministers' actions.

A critical estimate of the Governor-General's position

Under the Act of 1935, the Governor-General was furnished with a frightening armoury of powers, which made him the most powerful figure in the Federal Executive. It was he who administered Defence and Foreign Affairs (the most fundamental attributes of sovereignty); it was he who exercised an absolute control over 80% of the federal finance; it was he who issued ordinances and Governor-General's Acts unfettered by time and duration; and, lastly, it was he who could even suspend the constitution.

The Governor-General was the nerve-centre of the federal edifice and the whole executive authority of the federation revolved round him. If he failed, the whole system fell down with a crash. Obviously, the Federal Government was nothing but one man's rule and thus the Governor-General was a Grand Mughal of the medieval period or a dictator of the modern times. No better testimony to this fact can be cited than the well known observation of Mr. Winston Churchill, who once remarked: 'The Viceroy or Governor-General was armed with all powers of Hitler or Mussolini. By a stroke of pen, he could scatter the constitution and decree any law to be passed, or martial law which was no law at all. Of all these he was the sole judge. Such a functionary was a dictator and he had a very powerful army'.

In the administration of the reserved subjects the Governor-General was all-powerful. His Councillors did not share any powers with him. They could not even pretend to be his colleagues. They were merely his assistants to carry out his biddings. The

transferred sphere was also not beyond his powerful control. His special responsibilities in respect of some subjects and his powers to overrule the Council of Ministers as detailed in Chapter 12 of the Act made him sufficiently powerful in relation to the Council of Ministers. A ministerial measure to which the Governor-General was opposed could not be carried out. For, the latter could reject it on the simple plea that the ministerial action infringed upon his special responsibility in respect of one subject or the other. Moreover, the vague term like the 'grave' menace to the peace and tranquillity of India or any part thereof, the legitimate interests of the minorities etc. etc. could be stretched to include all conceivable cases so as to enable the Governor-General to proceed arbitrarily. Thus, behind the smoke-screen of special responsibilities, the Governor-General could have his orders executed even if they concerned the subjects falling within the ministerial sphere and even if the Ministers were opposed to it.

Law and order, for instance, was transferred to the Ministers with the belief that it was impossible to give further responsibility to the Indians without making the transfer of this subject. But, at the same time, the Governor-General was given the special responsibility of preventing any grave menace to the peace and tranquillity of India or any part thereof. This reduced the significance of the concession. Under the cloak of this special responsibility, the Governor-General could take any conceivable step to combat terroristic activities, revolutionary crimes and civil disobedience movement, even in defiance of the wishes of the Council of Ministers,. Similarly, his special responsibilities in respect of the protection of minorities, the protection of the interests of the public services, the safeguarding of financial stability etc. made it very easy for the Governor-General to interfere with the administration of the transferred subjects.

The Governor-General's power to veto measures of the Federal Legislature or to override the decisions of the majority in the Legislature was another effective weapon in his hands. It did not encourage the popular Ministers to introduce a bill to which the Governor-General was known to be opposed. Besides, knowing it full well that ■ conflict between them and the Governor-General would not be in the interests of democracy and, in turn, that of India, the Ministers were reluctant to act boldly in the discharge of their duties.

The Governor-General was empowered to make all the highest appointments in the country. The Financial Adviser, the Chief Commissioners, the Governor and Deputy Governors of the Reserve Bank, the Chairman and Members of Federal Public Service Commission, the Director and Deputy Director of Indian Railway Companies etc. etc. were all appointed by him. This power of patronage (which was sufficiently wide) also made him most powerful and influential figure in India.

In short, the powers of the Governor-General, under the Act of 1935, were unlimited and cut across the entire fabric of the administration. By acting in his discretion and exercising his individual judgement, by issuing ordinances and enacting Governor-General's Acts, he could take the whole of administration in his hands. To quote M.V. Pylee : 'The Governor-General's special responsibilities represented a retention of power as substantial and as fully endorsed by law as vested by the Constitution of the United States in the President as Commander-in-Chief, but more extensive both in respect of their scope and in respect of the circumstances in which they could be brought into play'.*

These extensive powers of the Governor-General were inconsistent with the basic principles of responsible government and there seemed no genuine desire on the part of Britain to transfer any real power to Indians. A. B. Keith observes, "Too narrowly interpreted, the special responsibilities of the Governor-General might destroy the possibility of ministerial responsibility. Evidently, there was little scope for establishing a system of responsible government or an attempt to create a facade of it."

(B) THE FEDERAL LEGISLATURE

The Federal Legislature was to consist of His Majesty represented by the Governor-General and two chambers known as the Council of State and the Federal Assembly.

(a) Council of State

The Council of State was to have a maximum of 260 members : 156 from the British Indian provinces and 104 (40%) from the federating states. The allocation of seats to the states was

*Pylee M.V. : *Constitutional Government in India* P. 103.

to be made on the basis of their relative rank and importance,* and their representatives to the Council were to be nominated by their rulers. Of the 156 seats of British India, six persons were to be nominated by the Governor-General on his discretion; seven seats were reserved for Europeans, one for Anglo-Indians and two for Indian Christians. The remaining 140 seats were distributed among the provinces and the representatives from them were to be elected by their legislatures.

The Council of State was to be a permanent body, one-third of its members retiring every third year. The powers of this chamber with regard to the consideration and passing of bills were identical with those of the lower chamber. Except financial bills, all other bills could be introduced in it.

This federal upper chamber, as its composition reveals, was bound to be a highly plutocratic and aristocratic body—an assemblage of vested interests, reactionary oligarchs and conservative politicians. Besides, the abnormally long term of its members was bound to breed irresponsibility and defiance of legislature.

(b) *Federal Assembly*

The Federal Assembly was to be formed with 375 members—250 members from British India and 125 from the Indian states. The representatives of the British India were to be elected by the provincial legislatures, each community and group in them forming a separate electoral college and choosing its quota of members. The members from the states were to be selected by their rulers in a manner they considered expedient. The allocation of seats to the states was based mainly on population.† The term of the Assembly was five years, but it could be dissolved earlier by the Governor-General.

The constitution of the Federal Assembly was unsatisfactory. The representation to it was based on no sound principle. Some communities like Europeans and Anglo-Indians were offered by far the larger number of seats than their proportion to

*For instance—Hyderabad 16, Mysore 7, Travancore 5.

†The allocation of seats among the states, writes Appadorai, was based mainly on population. Only a few states were large enough to be entitled to individual representation. The others were formed into groups and they were to return representatives either by rotation or jointly as laid down in the Act.

the total population in India would have entitled them to hold. The Hindus, on the other hand, with more than 70% of the total population, were reduced to a minority in the Assembly as a whole. Similarly, the Indian states were given an unduly large representation in the Legislature. The people in them constituted only one-fourth of the total population of India, but they were entitled to 125 seats ($\frac{1}{3}$ of 375) in the Federal Assembly. Besides, the presence of their representatives in the Assembly was sure to prove a drag on the constitutional progress of British India. The most objectionable feature of the Assembly, however, was the adoption of indirect election for its constitution, because in no country of the world the popular house is indirectly constituted. To quote N. Srinivasan, "The constitution of the lower house by indirect election, while the upper house was chosen by direct election, was a very peculiar departure from all precedents and wholly unjustified."*

Powers of the Federal Legislature

Under the Constitution Act of 1935, the Federal Legislature was given some powers, which may be classified as under :—

(a) Legislative Powers

The Federal Legislature was to make laws (i) for the British Indian provinces with regard to all subjects falling in the Federal and Concurrent Lists, (ii) for the Chief Commissioners' provinces on all matters, (iii) for the federating states on subjects ceded to the Federation under the Instrument of Accession. Before becoming an Act, every law was to be passed by both the chambers and assented to by the Governor-General. A joint meeting of the two Houses was to be called in case of difference of opinion between them. Since the decision in the joint meeting was to be taken on the basis of majority, the will of the Assembly was bound to prevail.

(b) Executive Powers

As regards the executive sphere, the powers of the two Houses were not identical. The Federal Assembly had the power to remove the Council of Ministers by a vote of no-confidence, while no such power was enjoyed by the upper chamber. However, both the Houses had the usual powers of asking questions and

*Srinivasan : *Democratic Government in India* P. 47.

supplementary questions from the members of the Executive. They could also move resolutions and adjournment motions.

(c) Financial Powers

In money matters, the powers of the two Houses were practically identical. Financial bills, however, could not be introduced in the Council of State. The items of expenditure, which were declared by the Governor-General as chargeable on the revenues of the Federation, were beyond the control of the Federal Legislature. It is estimated that these items of expenditure constituted about 80% of the budget. Of the remaining 20%, the items were to be moved in the form of demands for grants, first in the Assembly and then in the Council. The Governor-General was empowered to restore the grants refused or reduced by the Legislature. Thus, the financial powers of the Assembly were restricted to a very large extent and this was primarily due to the vast financial powers of the Governor-General.

Comments on Federal Legislature

The Federal Legislature envisaged under the Act of 1935 was more a legislature by courtesy than by its powers. If ever it had come into being, writes M.V. Pylee, it had to act as a body subordinate to the executive dominated by the Governor-General. In other words, it could not enjoy the status of a sovereign law-making body with unlimited jurisdiction like the British Parliament.

This weak position of the Federal Legislature was due to various factors. In the first place, its financial powers, on which depended the control of the executive and formation of national policies, were extremely limited. It had no power of initiation in raising revenues and had hardly any control over items chargeable on the revenues of the Federation. And under the Constitution the expenditure chargeable on the federal revenues formed 80% of the total budget. This absence of financial powers imparted an air of unreality to the responsible government and tended to reduce it to a mockery. The provision for the appointment of a Financial Adviser and Governor-General's power to restore the grants (refused or reduced, were also a check on the financial powers of the Federal Legislature. Besides, the special responsibilities of the Governor-General in regard to financial stability and credit of the Federation were other limitations on its financial powers.

In the legislative sphere also the powers of the Central Legis-

lature were limited. The procedure of the Legislature was controlled by the Governor-General through his powers of rule-making. He had also the power to intervene and stop its proceedings at any stage, if the maintenance of peace of the country required such an action. Dr. B.R. Ambedkar rightly observed : "What India got was nothing but a system of responsibility halved in parts and mutilated in substance by conditions and restraints."*

The Federal Legislature in its constitution was to be a very defective body. It was to be a strange amalgam of popularly elected members and the henchmen of the autocrats. Its other glaring defects were : the indirect election for the popular chamber, the extension in the principle of communal electorates and the preponderant representation of the states' nominees in both the chambers—House of Assembly ($33\frac{1}{3}\%$) and the Council of State (40%). All these defects made the Federal Legislature undemocratic, reactionary and retrograde.

OTHER ORGANS OF THE FEDERAL STRUCTURE

Besides the federal executive and federal legislature (the two chief organs of the proposed federation), some other organs also formed a part of the federal structure. A brief account of them is given as under :—

(a) *Federal Court*

The Act provided for the setting up of a Federal Court consisting of one Chief Justice and not more than six puisne judges. The judges were to be appointed by the Crown and were to hold office until they completed the age of sixty-five. Necessary qualifications for the judges were also prescribed by the Act. The Court was to have three kinds of jurisdiction—original, appellate and advisory. It had exclusive original jurisdiction to hear all disputes between any of the Federation, the provinces and the federated states, which involved any question of law. Its appellate jurisdiction extended to the hearing of appeals from the judgements of High Courts in India in matters in which the High Court concerned had certified that the case involved the interpretation of a provision of the Act of 1935. The advisory jurisdiction of the Court embraced all matters referred to it by the Governor-General (involving questions of law) for its advice.

* Ambedkar B.R. ; *Federation versus Freedom* P. 138

The Federal Court was established at Delhi in October, 1937 with three judges, one Chief Justice and two associate judges. Of all the institutions set up under the Act it proved to be the most successful in operation. It, however, had one major weakness. It was not the final or ultimate interpreter of the Constitution Act, for appeals from the Federal Court could be taken to the Judicial Committee of the Privy Council. This was a serious limitation on the powers of the Court.

(b) *Financial Adviser*

Under the federal scheme, provisions were made for the appointment of a Financial Adviser. He was to be appointed by the Governor-General acting in his individual judgement. He was to hold his office during the pleasure of the Governor-General, who was also authorised to determine the former's salary, allowances, staff, etc. This officer was to advise the Federal Legislature in financial matters and perform such duties as were assigned to him by the Governor-General. However, the principal duty of the Federal Adviser was to assist the Governor-General in the discharge of his special responsibility regarding financial matters.

(c) *Advocate General*

The Act provided for the appointment of an Advocate-General for the proposed Federation. Like the Federal Adviser, this officer was also to be appointed by the Governor-General acting in his individual judgement and was to hold office during the latter's pleasure. The person desirous of holding this high office was required to possess the qualifications of a judge of the Federal Court. The principal duty of the Advocate-General was to advise the Federal Legislature in legal matters and to perform such other activities, which were assigned to him by the Governor-General. He had the right to address both the Houses of the Legislature, though he was not expected to have any political affiliation with the ministry.

Yet, the court functioned as an independent and impartial institution interpreting the Constitution and laying down the foundations of a real federal judiciary in the country. It was the commendable work of the Federal Court, writes M. V. Pylee, that made it easy for the Supreme Court of India under the present Constitution to establish itself and effectively function as the true and final interpreter of the Constitution of India. *Pylee M. V. : Constitutional Government in India* P. 105.

(d) *Federal Railway Authority*

The Act envisaged a separate body for the management of the railways known as the Federal Railway Authority. It was to consist of seven members of whom three were to be appointed by the Governor-General at his discretion. The President of this body was also to be nominated by the Governor-General at his discretion from amongst its members. The actual administration of the railways was to be carried on by a Chief Commissioner and an Additional Commissioner. Separate Railway Funds and separate Railway Tribunal were to be set up for the Railway Department. This part of the Act was, however, not put into operation.

(e) *Reserve Bank*

Finance was, no doubt, transferred to the control of the Indian Minister, yet in the interest of financial stability a Reserve Bank of India was established. This bank was to be managed by a body consisting of a Governor and fifteen Directors. Of the 15 Directors, 8 were to be elected by the shareholders and remaining 7 were to be nominated of the Governor-General. The currency of this bank was to be in gold or silver.

A CRITICAL ESTIMATE OF THE PROPOSED ALL INDIA FEDERATION

The Indian Federation, as proposed by the Act of 1935, was unsatisfactory and disappointing. It was also the most complex federal structure ever known in the history of federalism. Sir Abdur Rahim, the President of the Central Assembly, described it as 'wholly unnatural, artificial and unknown to any constitution'. The League leaders criticised it "as the most reactionary, retrograde and injurious federal scheme." The proposed federation, as a matter of fact, was practically devoid of all those principles and conditions, which are bound to be present in a good federal system. It envisaged a peculiar combination of an unabashed autocracy and a partial democracy to safeguard the British interests in India. The nationalist leaders expressed the view that the federation was an insidious plan designed to facilitate and perpetuate the domination and exploitation of the people of India. It was also held that the British Government had planned in the form of the All India Federation an alliance with the conservative forces of India to stem the tide of extreme national-

ism. The principal shortcomings of the federal scheme were as under :—

In the first place, the *proposed Federation was to be a union of two or three dissimilar types of units* differing in area and population, constitution and government, and even in status, powers and traditions. The British Indian provinces enjoyed a measure of democratic government ; they believed in sending their elected representatives to the Federal Legislature ; their people held progressive views and also possessed certain civic and political rights. But no such conditions existed in the Indian states, whose inhabitants lived under despotic rulers, enjoyed no civic and political rights, knew little of the principle of election and representation and were sufficiently narrow and conservative in their outlook. This combination of the wholly disparate elements was sure to give a unique character to the proposed federation. Commenting on the attempted marriage of incompatibles, represented by the princely India and British Indian provinces, Prof. A. B. Keith writes, “The scheme was favoured with the object of providing an element of pure conservatism in order to combat any dangerous elements of democracy contributed by British India”.*

Secondly, the *all-India Federation promised to favour the Indian states at the cost of the British Indian provinces*. With their one-fourth of the total population of British India, they were allotted 40% of the seats in the Council of State and 33½% in the Federal Assembly. Besides, the nominees of the states were given equal rights with the representatives of British India to interfere with the administration of Indian provinces, while the latter had no voice, whatsoever, in determining the administration of the federated states. Thus, it was to be a kind of Federation, observed Dr. Rajindra Prasad, “in which the unabashed autocracy would sit entrenched in one-third of India and peep in now and then to strangle popular will in the remaining two-thirds.” Hence the absence of ‘mutuality’ between the British Indian provinces and Indian states was a glaring defect of the proposed Federation.

Thirdly, the *federal scheme did not envisage any real transference of power to the Indians*. The important activities of the federal government were placed under the exclusive control of the Governor-General. The popular Ministers in the Central

*Keith A.B. : *A Constitutional History of India* P. 293.

Government had nothing to do with currency and exchange ; the external affairs were beyond their control and Defence was a reserved subject. Besides, they had nothing to do with state railways—the greatest national asset of India. Eighty per cent of the federal expenditure was also placed beyond their control. And, above all, the little that was left with the Indians was hedged in by reservations and safeguards running throughout the Act. These checks and limitations were so large that they, according to Pt. Jawaharlal Nehru, kept the political and economic powers in the hands of the British Government. Mr. M.A. Jinnah observed in this context : ‘The Governor-General’s powers as to the budget and the estimates, his powers as to the interference in legislation, his extraordinary powers and special responsibilities left nothing for the Legislature to do’. Consequently, the position of the Federal Ministers under the new constitution, “was ornamental without being useful, onerous without being helpful to the people they were supposed to represent, responsibility without power, position without authority, name without any real influence”.*

Fourthly, the *proposed Federation was not the result of a voluntary union*. The very fact that the accession to the Federation was automatic for the provinces and optional for the Indian states was in itself an indication to the fact that the federal constitution was imposed from above. Moreover, the component units of the Federation were not given any right to frame their own constitution, nor were they granted substantial powers to amend the constitution. India continued to be a dependency as before.

Fifthly, the *federal scheme was anomalous and unsound in so far as the range of the federal powers differed from one unit to another*. The states desirous of joining the Federation had the freedom to choose the subjects which they wished to surrender to the Federal Legislature, but no such liberty was conceded to the British Indian provinces. The range of federal power with regard to the provinces was to be the same. Thus, while there was to be a uniformity in the range of the legislative and executive powers exercised by the Central Government *vis-a-vis* the provinces, there could be no such uniformity in the case of the Indian states. And this was inconsistent with the principles of a true federation.

Sixthly, the *replacement of the officials and nominated non-*

*Shah K.T. *Federal Structure* P. 223

officials by the nominees of the Indian states in the Federal Legislature was not a change for the better. The states' nominees, being conservative in belief and anti-democratic in outlook, were sure to stand in the way of the progressive and national elements. Thus, the presence of the states' nominees was bound to tighten the British control over India.

Sevently, the *provisions relating to amendment of the Constitution* were sufficiently complex and rigid. Unlike the Canadian or Australian federalism, where parliamentary sanction was a mere formality, the Indian Federation had made the parliamentary sanction a grim reality. The Indian Legislature could not even propose an amendment, except in certain minor cases specified in the Act. To quote Sir Shafaat Ahmad Khan. "The Constitution gave no power to the Legislature to change these arrangements or modify their details."

Eighthly, according to M.V. Pylee, "The division of the legislative powers into three elaborate lists—the Central, Provincial and Concurrent—embodied in the Constitution Act of 1935, was for the first time attempted under any federal system. The clear demarcation and the almost exhaustive enumeration of powers as shown in these three lists was unparalleled and created a record in the application of the federal principle."

Ninthly, the making of the *Council of State a highly plutocratic and aristocratic body, the indirect election for the lower house, the chain of safeguards running throughout the Act, and the absence of popular support, etc.* were some other glaring defects of the proposed Federation. In short, the Federal scheme, as was pointed out by the leaders of the Muslim League, "was to be the most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis-a-vis* the Indian States."

Tenthly, in the case of the Federation proposed under the Act of 1935, the *residuary legislative power was vested neither in the Centre nor in the Units.* It was, on the other hand, vested in the Governor-General, who in his discretion might empower the Federal Legislature or the Provincial Legislatures to enact a law in respect of any matter not enumerated in the Central or Provincial Lists.. The residuary power in the case of the Indian states was vested in the rulers thereof. This was something very peculiar, because in all the federations the residuary power is normally vested either in the centre or in the units.

Eleventhly, the *number of units to enter the federation as contemplated by the Act was bound to create a record*. There were some 600 states in India and even if only half of them entered the federation (which was the necessary minimum for the formation of the All India Federation), the number of units would have been unprecedented in any federation. Further, the disparities among the federating units in regard to their area, population, resources and system of internal administration would have also made the federation very complex.

SECTION IV PROVINCIAL AUTONOMY

The chief prize awarded to the Indians by the Act of 1935 was the so-called 'Provincial Autonomy'. The arrangements envisaged under this system of government in the provincial sphere not only presented a fundamental departure from the system in existence but also marked the culmination of the reaction against the complete centralisation introduced by the Charter Act of 1833. Although some attempts at decentralisation had already been made, yet the constitution in its essence had remained unitary. Even the Montford Reforms of 1919, which considerably freed the provincial governments from the central control by providing for the delegation and devolution of authority, had failed to affect the unitary character of the constitution. The Act of 1919 and the Devolution Rules, made under it had, no doubt, earmarked certain subjects as 'Provincial Subjects' and had also ascribed the responsibility of their administration primarily to the provincial authority, yet this responsibility was not an exclusive one. The Governor-General and the Central Legislature still interfered in the provinces and exercised an unlimited control over their administration. This, in consequence, reduced the Provinces to the position of mere administrative units. Besides, the Provincial Governments possessed no authority, whatsoever, of their own. They exercised whatever powers were delegated to them by the central government. This again made the provinces dependent upon the Governor-General-in-Council. Under such rigid conditions the life of the provinces could not find vigorous and adequate expression and they possessed no independent existence essential to become the members of the proposed All India Federation under the Act of 1935. Apart from that, the provinces had no definite sources of revenue. They had to look to the central government

for the necessary doles. In short, the provinces before 1935 were mere agents of the omnipotent centre ; they were effectively controlled by the Governor-General and his Council and had no independent and autonomous status, whatsoever, of their own.

The Provincial Autonomy, as contemplated under the Act of 1935, reshuffled and reorganised the administrative set-up of the provinces. The existing dual character of the provincial government was done away with. The distinction between the reserved and the transferred subjects was also removed. On the other hand, the provinces, under the new scheme, were furnished with a new constitutional status. They were made autonomous political units. They were assigned a definite sphere of control entirely independent of the centre. They were granted an exclusive authority within the specified sphere, which contained as many as 54 provincial subjects. The Central Executive and Legislature were denied any legal power or authority with respect to any matter falling within that exclusive provincial sphere. Besides, the Provincial Executives and Legislatures were, henceforth, not to be mere agents of the powerful Centre. They were not to derive their authority from the Governor-General-in-Council. On the contrary, they were to derive their administrative, legislative and financial powers from the 1935 Act of the Parliament, which demarcated the respective spheres of Provincial and Central Governments. The provinces were also allotted certain independent sources of revenue, though meagre, to meet some of their local needs. In short, the provinces were provided with conditions necessary for their growth, development and expression. *Thus, such a system of provincial administration, which conferred an exclusive and entire control on the provincial authority in certain specified subjects, made an attempt at the reduction of the central control over the provinces and also contemplated the introduction of responsible government in the provinces, though in a small measure, is known as the celebrated 'Provincial Autonomy' granted by the British Parliament under the Act of 1935.**

*In his concluding speech at the Second Round Table Conference Mr. Ramsay MacDonald observed : "We are all agreed that the Governors' Provinces of the future are to be responsibly-governed units, enjoying the greatest possible measure of freedom from outside interference and dictation in carrying out their own policies in their own sphere." According to the Joint Select Committee, 'it is a scheme whereby each of the Governors' Provinces will possess an executive and ■ legislature having precisely defined spheres, broadly free from control by the Central Government and Legislature'.

EVALUATION OF PROVINCIAL AUTONOMY

The 'Provincial Autonomy', envisaged under the Act of 1935, was far from a living reality. It was nothing short of a mockery and nothing more than a sham. It was subject to such limitations, both external and internal, as would not afford even a tinge of autonomy to the provinces. The scheme, when actually put into operation in 1937, in no way, conformed to the popular meaning of the expression. The provincial autonomy in the real sense of the term implies two things : freedom from external control and responsible government within the province. Both these conditions were conspicuous by their absence. The new system neither made the provinces sufficiently free from the external control nor did it provide responsible government within the provinces.

External Limitations

As regards the freedom of provincial governments from the external control, the Governor-General was furnished with ample powers to dwarf and dominate the affairs of the provinces. His special responsibilities were couched in such vague and elastic terms that it was quite easy for him to reject outright even an innocent action of a Minister, who did not carry favour with him. The Governor-General was to simply declare that the action in question infringed upon his special responsibilities in one respect or the other. And, much to his advantage, the vague terms like 'grave menace to the peace and tranquillity of India or any part thereof', 'the legitimate interests of the minorities' etc. could be easily stretched to include all conceivable cases to enable him to proceed arbitrarily. So much so that in the exercise of his special responsibilities, the Governor-General could have his orders executed even if they concerned the subjects falling within the specified sphere of the Ministers and even if they (Ministers) were opposed to them (orders).

The subjects professed to be transferred were not beyond the effective control of the Governor-General. For instance, Law and Order were transferred to the Ministers with the belief that it was impossible to give further responsibility to the provinces without making the transfer of these two subjects. But, at the same time, these very subjects were kept quite safe within the double lock of the special responsibility of the Governor-General and the Governor to prevent 'any menace' to the peace and tranquillity of India or any part thereof. Rightly remarked Dr. Rajindra Prasad that it

was nothing short of camouflage and fraud to declare that Law and Order had been transferred, when special responsibility in respect of them was reserved with the Governor-General and the Governor in wide and all-pervasive terms.*

In matters of provincial legislation also the control of the Governor-General was an established reality. Certain kinds of bills or amendments could not be introduced in the Provincial Legislatures without the previous sanction of the Governor-General. Bills duly passed by the Provincial Legislatures could also be reserved for the consideration of the Governor-General, who could either assent to the bill or withhold the assent or reserve it for His Majesty's pleasure or return the bill for reconsideration by the Provincial Legislature. But the most potent weapon placed in the hands of the Governor-General was his complete control over the Governor, when the latter acted at his discretion or in his individual judgement. It was clearly laid down in the Constitution that the Governor, while withholding his assent to a legislation, issuing ordinances at his discretion or, in his individual judgement, exercising special responsibilities, enacting Governor's Acts, restoring grants not sanctioned by the Legislature etc. was subject to the entire control of the Governor-General. This was so wide and sweeping a reserve of powers that it might place the whole of the financial administrative and legislative machinery of the province at the sole disposal of the Governor-General.

Internal Limitations

In addition to the external limitations on the so-called 'Provincial Autonomy', it was also subject to some internal limitations. And they would not allow the responsible governments to function successfully in the provinces. The Governor of a province did not act as a constitutional head of the Government. On the other hand, he was the controlling, directing and dominating head of the provincial administration. The Provincial Legislature was completely dominated by his powerful position. As a Crown representative, he could intervene, veto or legislate on his own authority. He could over-ride the Provincial Legislature even in matters of finance. The executive was also a creature of his will. He had a decisive hand in the nomination of the Ministers, distribution of the portfolios and in calling the meetings. So far so that the Governor could even suspend the ministry or

*Dr. Rajendra Prasad : Presidential Address, 1934.

dismiss it. Thus, the powers of the Governor were so vast and extensive that the Provincial Government was practically dominated by him in every respect. And it would not be too much to say that under the new system the Provincial Governments were carefully crushed under the heavy weight of the powers of the Governor, the Governor-General and the Crown.

The Public Services, too, had a share in reducing the 'Provincial Autonomy' to a mere farce. This was primarily due to the peculiar position of the Civil Servants, who were placed under the Indian Ministers, but were constitutionally outside their control. "This advantageous position enabled the Services," observed Dr. Rajindra Prasad, "to set at naught not only the policy, decisions and orders of their so-called superiors—the Ministers, but also to create deadlocks, which will be set down to the discredit of Indians, who will be branded as incompetent and inexperienced Ministers to whom it was a mistake, it will be said, to transfer powers."* Thus, the 'Provincial Autonomy', according to Prof. Sri Ram Sharma, had already been throttled by its authors before its corpse was presented to the eleven provinces on April 1, 1937.

The Indians had another cause of dissatisfaction with the new Constitution. The reforms, as originally proposed, were the result of much constructive political thought and their main features had considerable backing in India. But the subsequent reservations and safeguards, with which the whole scheme was riddled through and through, made the entire constitution unimpressive and uninspiring. To quote R. P. Masani, the real quantum of powers transferred was so insignificant, compared with wide powers still remaining with the British Government and its representatives in India that its critics could hardly be blamed for regarding the new constitution as a mockery of democracy.†

In view of all these encroachments and limitations upon the provincial administration it was aptly observed that the scheme of 'Provincial Autonomy' was a mere stunt. There existed a world of difference between the real significance of the word 'Autonomy' and the so-called 'Autonomy' as offered by the British Parliament to India in 1935.

*Dr. Rajendra Prasad: *Presidential Address*, 1934

†Masani: *R. P. Britain in India* P. 158

With all its shortcomings and handicaps, the new scheme, however, constituted a definite advance upon the then existing arrangements. The number of the electors was sufficiently enlarged ; all the members of the Provincial legislatures were to be elected ; the Executive was to be responsible to the Legislature and the latter to the electorates. All this was appreciated by Mr. Jinnah, who openly remarked : "The new scheme is undoubtedly an advance on the present." The introduction of the popular administration in the provinces, therefore, wrought a psychological change throughout the land. The peasants in the villages as also the workers in the towns and cities, acquired a new confidence and began to look forward to better things.

PROVINCIAL GOVERNMENTS

The Act of 1935 made the provinces considerably independent of the centre. Each of them drew its powers from the Constitution Act of 1935 and was autonomous over a wide field of government. The executive authority of the provinces extended to all matters in respect of which the provincial Legislatures had powers to legislate. It was vested in the Governors who were to exercise it directly or indirectly on behalf of His Majesty. In their structure, the Provincial Governments were similar to the Central Government with the difference that (a) the Provincial Legislatures had no representatives from the states ; (b) some of them were unicameral in structure and (c) unlike the Governor-General, the Governors had no reserved subjects under their care. Besides, there were some other minor differences between the special responsibilities of the Governors and the Governor-General.

I. PROVINCIAL EXECUTIVE

(The Governor)

(His Powers and Position)

The Provincial Executive consisted of the Governor and a Council of Ministers. The Governor was the head of the Executive. He was appointed by the King on the advice of the Secretary of State for India. The Governors of Bengal, Madras and Bombay were appointed from amongst men in the public life of Great Britain and drew Rs. 120,000 per annum as their salaries. The Governors of the remaining provinces were to be chosen from the senior officers of the Indian Civil Service on the

recommendation of the Governor-General. Their salaries were less than those of the Governors of the Presidencies. The salaries and allowances of the Governors could not be altered by the Provincial Legislatures. The Governors were appointed usually for a period of five years.

(a) *Executive Powers*

Like the Governor-General at the Centre, the Provincial Governor was also armed with vast and varied powers. His position resembled, more or less, that of the Governor-General, though it differed a little on account of the introduction of the Provincial Autonomy. In the exercise of his executive power, the Governor was to be a triple personality : (a) In some cases, he was to act on his discretion *i.e.*, there was no necessity for him to consult the Ministers at all. (b) In some cases, he was to act in his individual judgement *i.e.*, he was to consult his Ministers but was not bound to accept their advice. (c) In some cases, he was to act on the advice of his Ministers. Hence, the executive powers of the Governor may be stated as under :—

(i) *Discretionary Powers*

The Governor had a very large number of discretionary powers. Prof. K.T. Shah has enumerated as many as 32 different occasions on which he (the Governor) was authorised to act in his discretion, but the more important of them were the following : (1) He was to decide whether any matter was or was not one in which he was required to use his discretion or act in his individual judgement. (2) He was to preside over the meetings of the cabinet. (3) He was to take steps to combat crimes of violence committed to overthrow the Government. (4) He was to choose, summon and dismiss Ministers and to fix their salaries until the same were determined by the Act of the Provincial Legislature. (5) He was to make rules that no police officer should disclose the source of information regarding persons engaged in terroristic activities. (6) He was to make rules for the convenient transaction of the business of the Provincial Government. (7) He could decide whether any item of expenditure was votable or non-votable. (8) He could summon or prorogue the Provincial Legislature or dissolve the Provincial Legislative Assembly. (9) He could remove certain disqualifications of a person and could thus enable him to contest for the provincial legislature. (10) He could summon the two Houses of a bicameral legislature to a joint sitting, if there

existed any difference between the two Houses. (11) He could stop discussion on a bill or a clause of a bill in certain cases. (12) He could enact Governor's Act, promulgate ordinances, make regulations for peace and good government of excluded areas, give sanction for the introduction of bills of certain types in the legislature. (13) He was to appoint the chairman and members of the Provincial Public Service Commission etc.

(ii) Powers exercised in his individual judgement

These powers concerned the discharge of the Governor's special responsibilities given under Section 52 of the Act. As already stated, in the exercise of these powers the Governor was required to consult his Ministers but he was not bound to accept their advice. These powers were : (1) The prevention of any grave menace to the peace and tranquillity of the province or any part thereof ; (2) the safeguarding of the rights of civil servants, past and present, and their dependants ; (3) the safeguarding of the legitimate interests of the minorities ; (4) the securing of protection against commercial discrimination ; (5) the securing of the peace and good government of the partially excluded areas ; (6) the safeguarding of the rights of the states and the rights and dignity of any ruler ; (7) the securing of the execution of orders given to him under part VI of the Act (dealing with administrative relations) by the Governor-General at his discretion.

(iii) Powers to be exercised on the advice of the Ministers

The powers that the Governor was to exercise on the advice of his Ministers were few and nominal. This was because the Governor's discretionary powers and those which he could exercise in his individual judgement were very comprehensive. The Ministers were to be appointed by him. They held office during his pleasure and could be removed by him. These powers were comparatively less significant.

(b) Legislative Powers

The Governor enjoyed wide and varied powers of legislation : (1) He could summon the chamber or chambers of the Provincial Legislature (as the case might be) and could prorogue them. He could dissolve the Legislative Assembly. (2) He had the power to address the chambers separately or jointly. He could also send messages to the Council or Assembly in respect of a bill pending before it. (3) He could also call the joint session of the two chambers, if there existed any difference between the two Houses. (4) His

assent was necessary for the bills passed by the Legislature. He could give his assent, withhold it or reserve a bill for the significance of His Majesty's pleasure. He could also return a bill to the Legislature for reconsideration. (5) He could make rules after consultation with the Speaker or the President, for regulating the procedure or conduct of business in the House of the Provincial Legislature. (6) He could prohibit the discussion or the asking of questions on matters relating to the Indian states. (7) He could also prohibit the discussion or asking of questions on matters relating to foreign affairs, conduct of any ruler of a state or of a member of a ruling family. (8) He could stop the progress of a bill in the Legislature, if he were satisfied that the bill or clause of the bill or even amendment to a clause involved menace to the peace and tranquillity of the Province or would affect the discharge of his special responsibility.

The most important of the legislative powers of the Governor were his powers to enact Governor's Acts and promulgate ordinances, when the Legislature was not sitting and also when it was in session.

(i) For the satisfactory discharge of his functions, the Governor had the power to make Acts which had the same force as any Act of the Legislature. But the Legislature or the Ministry had no responsibility for such Acts. The Governor was to present the draft of a bill to the Provincial Legislature saying in a message that the enactment of the bill into law was essential. The Legislature was given one month for consideration of the bill and thereafter it became law simply by the authority of the Governor.

(ii) The Governor could also promulgate ordinances at his discretion. These ordinances were to be of two kinds : those promulgated during the absence of the Provincial Legislature and those issued by the Governor in the exercise of his discretion or individual judgement. The latter kind of ordinances were to be framed by the Governor on his own responsibility, whereas the responsibility of the former lay on the Ministers.

(c) *Financial Powers*

The financial powers of the Governor were also quite significant : (1) He was to decide whether any expenditure was to be charged on the revenues of the province. (2) He was to secure

the completion of the financial demands and estimates of the Provincial Government in the Legislature in time. (3) No demand for grant could be introduced in the Legislature except on his recommendation. (4) He could restore any grant reduced or rejected by the Legislature.

Comments

A close examination of the powers of the Governor under the Act of 1935 reveals that he was not an ornamental head of the provincial government. On the other hand, in him rested the full authority of the province. His discretionary, legislative and those unlimited powers, which he could exercise in his individual judgement, made him a formidable authority in the province. The Ministers were his nominees ; the Legislature was impotent before him ; the secretaries to the Ministers were his subordinates. Besides, it was the Governor, who dominated the Legislature from its inception to its dissolution. It was he who was responsible for the birth, life and even death of the cabinet in the province, and it was he who, in fact, controlled the provincial finance. Not only that, the provincial Governor could also make laws, which were as good as the laws enacted by the Provincial Legislature. In short, he was a dictator in the province and dominated every branch of its administration.

The Council of Ministers

The Act provided for the Council of Ministers to aid and advise the Governor in the exercise of his functions. The Ministers were to be chosen by the Governor and held office during his pleasure. The Instrument of Instructions, however, enjoined upon the Governor to select the Ministers in consultation with a person likely to command a stable majority in the Legislature and they were to collectively command the confidence of the Legislature. It was only in this way that the spirit of collective responsibility could be fostered and encouraged. Besides, the Provincial Legislature was also empowered to remove the Ministers by showing want of confidence in them. This was done to encourage the growth of responsible government in the provinces.

The strength of the Ministers varied from one provincial cabinet to another, and the cabinets worked on portfolio system. One or more departments were assigned to a Minister, who was responsible for their efficient working. Parliamentary secretaries were also attached to the Ministers to assist them in their work.

Evidently, the provincial executive possessed several features and formalities of a parliamentary type of government. But the formidable powers of the Governor, which included the Section 93, were unfavourable to the emergence of responsible government in the real sense of the term.

The working of responsible government in the provinces was, however, seriously handicapped in some ways. The Governor could preside over the meetings of the cabinet in his discretion. The Instrument of Instructions enjoined upon the Governor to secure communal representation in the provincial cabinet. This was inconsistent with the principles of joint responsibility and party government. It was sure to make the successful working of the cabinet type of government difficult. The salaries of the Ministers, of course, could not be varied during their term of office.

II. PROVINCIAL LEGISLATURES

Under the Constitution Act of 1935, the provincial legislatures also witnessed some changes. The significant amongst them were as follows :

(i) *Bicameral Legislatures in Six Provinces*

Under the Constitution Act of 1935, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral. They were to consist of two chambers—the Legislative Council and the Legislative Assembly. In the remaining five provinces, the legislatures were to have only one House (*i.e.* the Legislative Assembly) as before. The introduction of the second chamber was bitterly resented by the progressive elements in India on the ground that the meagre resources of the provinces could not afford to keep an institution which was at once reactionary and unnecessary. But, justifying their utility on the usual considerations in its favour, the second chambers, were introduced in the aforesaid six provinces.*

*The Franchise Committee argued in favour of the second chamber in these words : (a) There was need for a body gifted with expert knowledge and experience to act as a stabilising factor and a security against hasty legislation and abuse of power. (b) Through the Upper Chamber would be secured the services of those who would not choose to stand for election. (c) It would provide a more effective brake in normal times than the Governor.

(ii) *Composition of the Chambers*

Under the new arrangements, all the members of the legislative assemblies were to be elected. The legislative councils were to have, of course, some nominated members. There was no change in the principle of allocation of seats. They were to be filled on the basis of communities and interests. To the communities already entitled to separate representation were now added the scheduled castes and the backward tribes. A further wedge was driven into the solidarity of the nation by granting separate representation to women in most of the provinces. In all, seats were to be filled by as many as 17 sections of electorates.*

The number of the members of the Legislative Assemblies varied from 50 in the North-West Frontier Province to 250 in Bengal and that of the Councils from 21 in Assam to 65 in Bengal. The Assembly was to continue for 5 years, but it could be dissolved earlier by the Governor at his discretion. The Council was to be a permanent body, one-third of its members retiring every third year.

Property qualifications continued to be the main basis of franchise for both the Houses. A much higher standard was adopted for the upper house, with the result that only rich men and some privileged persons of very high status like Rai Bahadurs, Executive Councillors, Ministers, Judges of High Courts etc. enjoyed the right to vote. The franchise for the lower house was, however, fixed at a level much lower than before and this resulted in the four-fold increase in the number of voters. Nevertheless, not more than 14% of the total population of British India had the right to vote for provincial assemblies. Previously only, 3% of the population had enjoyed this right.

(iii) *Powers of the Provincial Legislatures*

The Provincial Legislatures were empowered to make laws pertaining to all matters enumerated in the Provincial List. They could also make laws with respect to any matter included in the Concurrent List. In case of conflict between the federal and provincial laws on a particular subject, the federal

*1. General seats (mainly for Hindus) 2. General seats reserved for the scheduled castes. 3. Muslims. 4. Europeans. 5. Anglo-Indians. 6. Indian Christians. 7. Sikhs in the Punjab and N.W.F.P. 8. Commerce and Industry. 9. Landholders. 10. Labour 11. Universities. 12. Backward areas and Tribes. 13. Women (General). 14. Women (Sikh). 15. Women (Anglo-Indian). 16. Women (Muslim) 17. Women (Indian Christian).

law (whether passed before or after the provincial law) prevailed. Powers of both the Houses of the Legislature were co-ordinate except in money bills, which were to originate only in the Assemblies. Leaving aside the non-votable items, which constituted 30% of the total expenditure of a province, the remaining items of expenditure were submitted to the vote of the Assemblies. Both the chambers enjoyed the usual powers of asking questions and supplementary questions from the Ministers. They could pass resolutions and could also move adjournment motions in order to draw the attention of the government to matters of urgent public importance. Apart from these powers, the Assemblies had the significant power of removing the Ministers by showing want of confidence in them.

The powers of the Provincial Legislatures were, however, subject to various limitations, which were at once real and comprehensive. The previous sanction of the Governor-General or the Governor was made obligatory for introducing majority of the bills. Financial bills could be introduced only on the recommendation of the Governor. No bill passed by the Provincial Legislature could become an Act without receiving the assent of the Governor, who might give it or withhold the same in his discretion. He might return a bill for reconsideration by the Legislature or reserve it for the significance of His Majesty's pleasure. Any Provincial Act assented to by the Governor-General might be disallowed by His Majesty within a year from the date of assent. The greatest check on the powers of the Legislature were, however, the discretionary powers and special responsibilities of the Governor, which enabled him to act as a dictator in the provincial sphere, if he so desired.

Comments

The Provincial Legislatures under the Act of 1935 envisaged an advance upon the previous arrangements. The strength of their members was considerably enlarged and they were to be elected by direct vote. The Assemblies were to be entirely elected bodies, while the Councils were to have only an insignificant element of nominated non-officials. With the lowering of the franchise the strength of the voters considerably increased.

With all these improvements, to their advantage, the Legislatures had some serious drawbacks. The allocation of seats on communal basis did not make them truly representative of the

people. The upper chamber, representing rich persons and higher classes of the society, was nothing but a citadel of reaction and vested interests. The extension of franchise was much behind the ideal of adult suffrage. Even under the Act of 1935, 73% of the population of India did not enjoy the right of electing their legislators. This was repugnant to the essence of the representative government, which calls for a legislature elected on a liberal franchise. Worse still, the powers of the legislatures were 'cribbed and confined' by the formidable position of the Governor, who had vast discretionary powers and special responsibilities.

III. PROVINCIAL AUTONOMY

(Its introduction and working)

The Government of India Act, 1935 did not evoke popular enthusiasm. Its first part embodying the federal scheme was rejected by all the political parties in India. The second part relating to the provincial governments was, however, accepted by most of them. The Congress was hostile to the entire arrangement. It, therefore, decided to fight the elections and go into the legislatures 'to bend the constitution to its will or break it.' On March 30, 1937 Mahatma Gandhi said, "The policy of the Congress was not to secure an amendment but an absolute ending of the constitution, which no body likes." In accordance with its policy and programme, the Indian National Congress fought the elections in 1937. Its victory at the polls was very striking. It contested for 1161 seats and won as many as 715. Of the eleven provinces for British India, it gained absolute majority in five (Bombay, Madras, Bihar, U.P. and C.P.) and was the largest single party in three others. Only in the Punjab, Sind and Bengal was it in minority. By contrast, the Muslim League secured only 4.8% of the total Muslim vote.

Immediately after the elections, the Congress was confronted with the question whether it was to accept the office or not. A decision had become imperative for, the provincial part of the Act was due to go into effect in April, 1937. A large section of opinion within the Congress ranks led by Pt. Jawaharlal Nehru urged rejection. But a majority of the Congressmen stood in favour of accepting the office.* A compromise formula was finally evolved

*According to E.W.R. Lumby the bulk of Congressmen favoured this idea, because they saw that provincial autonomy under the Act offered them substantial power and that acceptance of office would enable them to carry out their programme of social reforms.' *The Transfer of power in India* P. 20.

by Gandhiji : the Congress would agree to form ministries in those provinces, where the party leader in the legislature could state publicly that the Governor would not use his special powers in day-to-day administration of the province and would act on the advice of the ministers in all matters under provincial jurisdiction. The Governors refused to give these assurances on the ground that they (assurances) would violate the provisions of the Act. The Congress, on the other hand, refused to take office. When the Governors found that the Congress was reluctant to form Provincial ministries, they sent for the parties, which had the second largest support in the legislatures, even though they did not command a majority. The interim ministries were formed by non-Congress (and in some cases anti-Congress) elements.

After three months negotiations, the Viceroy issued a statement to the effect that the spirit of the Act of 1935 called for co-operation between the Governors and their ministries.* Though this statement meant no categorical assurance, yet it provided a basis for rapprochement. Consequently, in July 1937, the interim ministries resigned and the Congress formed governments in six provinces. It also took office in course of time in the provinces of Assam and the N.W.F. Province. In the remaining three provinces of British India viz. the Punjab, Bengal and Sind, coalition ministries were formed. Thus came into force the second part of the Act, which embodied the scheme of 'Provincial Autonomy.'

WORKING OF THE PROVINCIAL AUTONOMY

The 'Provincial Autonomy', which had been introduced in the eleven provinces of British India in July, 1937 worked for different periods in different provinces. In non-Congress Provinces viz., the Punjab, Bengal and Sind, it continued to function for about ten years. Bombay, Madras, Bihar, C.P., U.P., and North-West Frontier Province, where Congress formed ministries, had a short spell of Provincial Autonomy between 1937 and 1939. Thereafter, it was replaced by the dictatorial role of the Governors, which remained in force till 1946. Assam and Orissa also worked the new scheme for a couple of years (1937-39) but after 1939 they witnessed short spells of Governors' rule alternating with government by a ministry.

*The British Government, in the interest of its prestige, was anxious that the new scheme should not break down. Lumby, E. W. R. *The Transfer of Power in India*. P 20.

The Role of Governors in Congress Provinces

During the period Congress was in office, the role of the Governors in their provinces was, on the whole, satisfactory. In a marked degree, they acted as constitutional heads and their relations with the Ministers were fairly cordial. Some constitutional crises developed in the Congress-Provinces but were soon overcome. A brief account of these episodes would not be without interest.

(i) *Khare Controversy in C.P.*

Controversy

Generally speaking, the Congress ministries worked in a team-spirit. The C.P. ministry was, however, an exception. This ministry had two dominant sections between whom there was not much love lost. Besides, the Premier or Chief Minister, Dr. N. B. Khare was not in the good books of the Congress High Command. As a result of these unfavourable conditions, there arose difficulties between the Premier and his colleagues. Dr. Khare, thereupon, demanded resignations from two of his colleagues (D. P. Mishra and R. S. Shukla), who refused to resign on the ground that they had not received any instructions to that effect from the Congress High Command. In order to find out an amicable settlement of the crisis, the Congress Parliamentary Committee and the Working Committee decided to meet in Wardha. But before the Working Committee could meet, Dr. Khare submitted the resignation of his cabinet. The Governor of the province dismissed the rebel ministers and allowed Dr. Khare to reconstitute the cabinet. Obviously, the Governor went out of the way to oblige Dr. Khare and his interference was uncalled for. This act of the Governor was resented by the Congress High Command, which blamed the Governor for trying to cause a rift in the Congress ranks. Disciplinary action was taken against Dr. Khare. He was replaced by R.S. Shukla as party leader. When Shukla formed his cabinet, Misra was also included. Dr. Khare was left out.* This bold stand of the Congress High Command had a healthy effect on the working of the new system.

*"That an able man like him (Dr. Khare) should thus become an opponent of the Congress was indeed very distressing. Since his ejection, he thought it his duty to discredit Congress on every occasion. He issued statements and said things about the Congress which even its worst detractors might have hesitated to utter. The action we had taken was only to safeguard the discipline and reputation of the Congress." *Dr. Rajendra Prasad : Autobiography* P. 477.

military officials of Allied forces were of the unanimous opinion that war against Japan would last a year or two after the end of hostilities in Europe. So, India was expected to be the principal base of allied operations in East Asia. As a professional soldier, Lord Wavell appreciated the crucial role assigned to India.

In view of all these considerations, Lord Wavell personally consulted the British Government in the spring of 1945 and drew their attention towards the Indian situation. After ten weeks of consultations in London, he returned to Delhi. In the interval, much had happened. The war in Europe had ended, Churchill had resigned and new elections were in the offing. A protracted struggle against Japan was anticipated. The time was ripe for some announcement. So, in June 1945, simultaneous statements were made by Lord Wavell and Mr. Amery, the Secretary of State for India, with regard to their new proposals to solve the Indian problem.

Wavell-Amery Proposals (Wavell Plan)

Wavell-Amery proposals envisaged some constitutional changes in the frame-work of the Government of India Act, 1935. The important amongst those changes were as under :

(a) The Viceroy's Executive Council would be reconstituted. The new Council would include only Indian members except the Viceroy and the Commander-in-Chief. The Indian members of the Council would be nominated by the Governor-General from amongst the leaders of Indian public life.

(b) A conference of party leaders, provincial premiers and ex-premiers would be called and asked to submit to the Governor-General the lists of names from which he could select the personnel of the new council.

(c) The new council would give a 'balance representation to the main communities including equal proportions to caste Hindus and Muslims.'

(d) The portfolio of External Affairs (except for the frontier and tribal matters) would be transferred from the Governor-General to an Indian member of the council.

(e) It was expected that the co-operation at the Centre would be reflected in the Provinces, and responsible governments would be restored in the 'Section 93 Provinces' on the basis of the coalitions of the main parties.

Simla Conference and its failure

After having made the announcement about his plan, Lord Wavell set out to create an atmosphere of harmony and good will in the country. He ordered immediate release of the members of the Congress Working Committee. Thereafter, he convened a conference of the prominent Indian leaders to discuss proposals for the formation of the Executive Council. The most important Indians, who attended the Conference, were Gandhiji, Azad and Jinnah. Besides them, there were eleven provincial premiers (most of whom were appointees of the Viceroy) and the Congress and League leaders in the Council of State and the Central Assembly.

The conference started in a hopeful atmosphere, but rapidly gave way to frustration. When the Governor-General requested the Congress and League leaders to submit lists of persons for the proposed Executive Council, Jinnah became adamant. He demanded that no Muslim should be given a place on the Council unless he was a member of the League. For, League, he claimed, was the sole representative of the Muslims. Hence, he wanted that all the five Muslims nominated by the League should be included in the Council. This eliminated the possibility of a Congressite Muslim being appointed. The Congress, being the national party from its very inception, was not ready to accept this claim of the League. Moreover, the League's claim to represent all the Indian Muslims at this time was baseless. Of the four Muslim majority provinces, the North-Western Frontier Province was under Congress control; the Punjab was governed by the Unionists, and Sindh was dependent on Congress support for a stable ministry. The Viceroy tried to win Jinnah's co-operation, but in vain. At last on 14 July, 1945, he terminated the conference.

The Simla conference, writes Maulana Azad, marks a break-water in Indian political life. This was the first time that negotiations failed, not on the basic political issue between India and Britain, but on the communal issue dividing different Indian groups.* It is true that the Congress leaders regretted their inability to meet the rising demands of the Muslim League, but this was not the only factor responsible for the failure of the conference. The evidence suggests that the conference failed because of some other reasons also. First, Jinnah did not extend

* *India Wins Freedom* P, 160.

his co-operation ; rather, he threatend to boycott the Executive Council. Secondly, Wavell refused to impose his decision (in spite of Gandhiji's request) and thus allowed Jinnah to veto its (Conference's) decision. According to Lord Mosley one British Governor of an important Indian province successfully wrecked the conferencefirst by, advising Jinnah on tactics, and then using his influence on the Viceroy to make sure that the tactics worked.* This view is supported by Menon, who was told by Husan Imam that a member of the Executive Council was advising Jinnah to be intransigent.† Whatever might be the causes of its failure, the Simla Conference at least clearly demonstrated that Jinnah personally wielded the veto power on the country's constitutional advancement. Besides, the Viceroy had extended *de facto* recognition to League as the only Muslim organisation.

I. N. A. Trials

About four months after the Simla Conference, two dramatic issues viz. the trial of the Indian National Army (I. N. A.) and the Naval Mutiny in Bombay dominated the Indian politics. And they had a bearing on the constitutional progress of India. The I. N. A. or Indian National Army had been raised by Subhash Chandra Bose some time in 1943, partly out of Indian prisoners of war captured by the Japanese in Malaya, Singapore and Burma. This army had fought for the freedom of India under the leadership of Netaji and had put the British Government in great embarrassment. Over 20,000 of its soldiers had been rounded up and repatriated to India at the termination of hostilities. These were considered guilty of transferring their allegiance to Netaji and of coercing loyal recruits to join them. When the Government of India made known its intention of punishing some I. N. A. officers, the nationalists rallied to their defence. According to some critics, they found in it a good opportunity to retrieve the situation, because after the failure of the Simla talks the Congress prestige had reached a low level and at that time they could not attract the people with any new programme.

Anyway, as soon as the trials began in November, 1945, the Congress completely identified itself with the I. N. A. Bhullabhai

*L. Mosley ; *The Last day of the British Raj*, P. 15.

†Menon, P. 214. Husan Imam was the leader of the Muslim League Party in the Upper House of the Central Legislature and a delegate to the Simla Conference.

Desai, leader of the Congress Party in the Central Legislature, was the chief defence counsel and even the veteran Sir Tej Bahadur Sapru attended the opening day of the trial despite his illness. The drama was heightened by the fact that the legal battle took place at the Red Fort in Delhi, the enduring expression of Mughal power in India, which called forth visions of a united India without the British. It was also intensified by the inter-communal character of the first and most important trial. Major General Shah Nawaz, a Muslim, Colonel Dhillon, a Sikh and Major Sehgal, a Hindu were put on trial together for waging war against the King Emperor. All were convicted but under the pressure of Indian public opinion, the sentences were suspended. According to Michael Brecher this I. N. A. episode weakened the prestige of British officers and undermined the dash of the army. Moreover, these trials shook England's faith in the loyalty of Indian soldiers.*

Naval Mutiny in Bombay

During the winter of 1945-46, a great disaffection spread among the military services and this dealt another blow to the British prestige. Strangely enough, the trouble began in the R. A. F., which mutinied at Dum Dum airport near Calcutta and other stations in India and the Middle East. These were followed by hunger strikes in the Royal Indian Air Force and minor cases of indiscipline in the Royal Indian Army. The explosion occurred on 18th February, 1946 in the form of a mutiny of naval ratings at Bombay. For the next five days the leading base of the R. I. N. and the city itself presented the appearance of a minor battlefield. These disturbances not only gave a rude shock to the British prestige but also convinced the British authorities that it was now difficult for them to keep India in bondage. Consequently, Mr. Attlee (who had formed his Government in Britain at the end of July, 1945) made an announcement to the fact that a special Cabinet Mission would shortly be despatched to settle the Indian problem.

*Many writers have criticised the I. N. A. Trials as inopportune and ill-timed, for they increased the ill-will towards the British. There is some truth in it, but the other alternatives were equally dangerous. The political atmosphere in India was such that any decision on such an issue was bound to have emotional reaction.

SECTION IV

THE BRITISH CABINET MISSION

(March, 1946)

At the time of despatch of the Cabinet Mission to India, the political situation in our country had undergone a complete transformation. India breathed in a changed atmosphere. In the words of Maulana Azad, 'An absolutely new India had been born. The people, whether officials or non-officials, were fired with a new desire for freedom. All the three branches of the Armed forces—The Navy, the Army and the Air Force—were inspired by a new spirit of patriotism. They were, in fact, so full of enthusiasm that, at times, they could not conceal their feelings.' The I. N. A. Trials in the Red Fort had awakened the sense of national prestige.

Fortunately for India, there was also a change of spirit on the British side. The Labour Party, accredited with its sympathy for the Indian cause, had won a sweeping victory in the general elections and had succeeded Mr. Churchill's government. Its leaders were determined to pursue the declared policy of their party towards India. In reply to Azad's telegram of congratulations on their success, Mr. Attlee and Mr. Cripps had given a very favourable assurance. They had rather shown their anxiety to fulfill the pledges and promises that had been held forth to India during the years they were in opposition. The Parliamentary Delegation, which visited India in the winter of 1945-46, with a view to collect first-hand impressions about the political situation in India, had sensed the change of temper in the country. They were convinced of the fact that India's freedom could not be delayed any longer. Their report to this fact further strengthened the British Government's resolve to effect an early settlement of the Indian problem.

As a result of this change in the attitude of the London Government, the authorities in India had also grown considerate to the nationalists. Lord Wavell, on the request of the Congress President, had released the political prisoners before the general elections in India. He had also shown a desire to solve the Indian problem by calling a conference of the Indian leaders at Simla. Obviously, the circumstances, under which Cabinet Mission was despatched, were more favourable for the solution of the Indian problem than those

under which Cripps proposals had been offered in 1942.

A few days before the despatch of the Mission (15 March 1946) Mr. Attlee had made a significant statement in the British House of Commons. He had plainly declared that, while every effort would be made to safeguard the interests of the minorities, no minority group would be allowed to stand in the way of India's political progress. Britain was prepared to give freedom to India and would like her to remain within the Commonwealth, but on that issue also, India would be free to decide. This statement of the British Prime Minister, though greatly disappointed the League, was found to be satisfactory by the Congress leaders. This was a clear indication to the fact that the British Government was, indeed, very keen to solve the Indian problem.

Cabinet Mission arrives in Delhi

In accordance with the declaration of the British government, a Cabinet Mission consisting of Lord Pethick Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander arrived in New Delhi on March 24, 1946. Sir Pethick Lawrence held the office of the Secretary of State for India. He was known to be a genuine friend of our country. In one of his small notes he wrote to Gandhiji, "I have come here for the express purpose of launching India on its path to sovereignty and independence."* Sir Stafford Cripps, a dominant figure in the Cabinet Mission, was the President of the Board of Trade in London. Though his attempt to solve the Indian problem in 1942 had failed, yet his sympathy for the Indian aspirations was undoubted. Sir A.V. Alexander was the First Lord of Admiralty. He was sent to act as a brake on Cripps' enthusiasm, and to make the ultimate arrangements acceptable to the right wing of the Labour Party.

Immediately after their arrival in Delhi, the three wise men held preliminary discussions with the Viceroy and his Executive Council. Thereafter, they began a round of interviews with the representatives of the various political parties. Since negotiations with party leaders did not result in an agreed solution, the Cabinet Mission drew up its own scheme, which is known as Cabinet Mission Plan of 1946.

CABINET MISSION PLAN

The Cabinet Mission had not come with any prepared plan from England as Cripps had done in 1942.* It framed its proposals after discussions with the Indian leaders and presented them in two instalments. On 16 May, it announced a long-range plan, *i.e.* proposals for a constitutional settlement; and on 16 June, it outlined a procedure for the formation of an Interim Government. But, for the convenience of study, the Cabinet Mission proposals may be divided into the following three sections :—

(A)—Proposals for long-term plan or constitutional settlement

The Cabinet Mission in its long-term plan offered the means by which the Congress and the League could realise their contradictory aims. To put in other words, it made provision by which the Congress could preserve a united India and yet the League could achieve the reality for Pakistan.

As proposed by the Mission, there was to be *three-tier federal constitution consisting of a union, three Groups of Provinces and the individual Provinces and States* :

1. The Union of India, as contemplated by the Plan, was to embrace both the British India and the Princely States.

2. The Union Government was to be at the top of the three tiers of authorities. It was to consist of an executive and a legislature composed of British Indian and States' representatives. The Union Government was to control only defence, foreign affairs and communications. To safeguard the interests of the Muslim community it was provided that any question raising a major communal issue in the legislature would require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all members present and voting.

3. The Provinces, enjoying a wide measure of self-government, were to constitute another tier. All subjects other than the Union subjects and all residuary powers were vested in the Provinces.

4. To provide for the midway tier, the provinces were given freedom to form themselves into groups with their own executives and legislatures. The groups were to deal with such common subjects as the units within the groups might decide.

5. In order to offer the reality of Pakistan to the Muslim

*We have really no scheme either on paper or in our heads. (Cripps) Menon; P. 236.

League, the Plan proposed three groups of Provinces : (a) *Section A*, consisting of six Hindu-majority provinces (Madras, Bombay, the United Provinces, the Central Provinces, Bihar and Orissa); (ii) *Section B*, consisting of North-Western Muslim majority Provinces viz. the Punjab, the North-West Frontier Province, Sindh and Baluchistan. (iii) *Section C*, consisting of Bengal and Assam, representing the North-Eastern Muslim majority region.

(B)—*Proposals for Constituent Assembly*

(1) For framing a constitution on the above principles, the Cabinet Mission proposed the calling of a Constituent Assembly representing all the parties. It was to consist of 389 members : 296 from the Provinces and 93 from the States.

(a) Each province was to be allotted a number of seats in proportional to its population (roughly in the ratio of one to a million).

(b) The seats thus allotted to a province were to be divided among the main communities (General, Muslims and Sikhs) in proportion to their population.

(c) The representatives of each community were to be elected by the members of the same community in the Provincial Legislative Assembly.

(d) The number of the seats allotted to the Indian States was also fixed on the basis of population, but the mode of choosing the representatives was to be settled by consultation. At the preliminary stage, they were to be represented by a Negotiating Committee.

(2) The representatives elected both from the Provinces and the States were to meet in New Delhi to form the Constituent Assembly or constitution-making body. Then, they were to divide themselves according to the Groups of the Provinces and draw up constitutions for the Provinces included in them. They were also to decide what subjects were to be dealt with at the Group level.

(3) After the Group constitutions were settled, the members of the Groups were to meet again as a whole to settle the details of the Union Constitution.

(4) It was mandatory for the Provinces to sit in the appropriate sections. But after the first General Elections were held under the new Constitution, it was to be open to any province to come out of any Group by the vote of its legislature.

C—Proposals for short-term Plan (Interim Government)

(i) The short-term Plan of the Mission envisaged the immediate setting-up of an Interim Government. The Interim Government was to carry on the administration, while the constitution-making was in progress. It was to consist of 14 members—six Congress men, five Leaguers, one Indian Christian, one Sikh and one Parsi.

(ii) In the Interim Government, all the portfolios were to held the Indians, and the British Government was to extend full co-operation to it on its working.

EVALUATION OF THE PLAN

The Cabinet Mission Plan was a comprehensive scheme to deal with the Indian constitutional problem. It was also cumbersome and complicated. The members of the Mission had to work hard on its preparation. Lord Wavell in a broadcast from Delhi on May 17, 1946, pointed out "...very much hard labour, very much earnest study, very much anxious thought, and all the good-will and sincerity at our command, have gone to the making of the recommendations". Though the Plan could not claim to be an ideal one, yet it had many points to commend in its favour. To the Congress it offered a 'United India,' to the League a *de facto* Pakistan and to the Princes a complete freedom of action. Besides, the Plan gave assurance to the Sikhs to preserve the unity of the Punjab, and to the other smaller communities to secure protection of their interests. Even Muhammad Ali Jinnah had to admit that there could be no fairer solution of the minority problem than that presented in the Cabinet Mission Plan.

MERITS OF THE PLAN

It ruled out Partition of British India

The Cabinet Mission Plan ruled out the partition of British India. The members of the Mission clearly stated that they could not recommend the formation of a separate sovereign state of Pakistan as claimed by the Muslim League. Their main arguments in this context were : (i) It would not solve the communal minority problem ; (ii) it would disintegrate the transportation and postal and telegraph systems, which had been established on the basis of a United India ; (iii) it would endanger the defence of the country by splitting the Indian army into two ; (iv) the two halves of the proposed Pakistan, separated from each other by 700 miles, would

have to depend on the good-will of Hindustan both in war and in peace ; (v) there seemed no justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population was predominantly non-Muslim. The three wise men had also with them two immediate considerations. For the successful defence of the South-East Asia (where War had by then spread) it was necessary to keep the Indian army intact. In 1946, it was the strongest military force in Asia. Moreover, during their negotiations with the Indian leaders, they had noted an almost universal desire, outside the supporters of the Muslims League, for the unity of India. On account of all these administrative, economic and military reasons, the Cabinet Mission opposed the partition of British India and favoured the creation of an Indian Union embracing the British Indian provinces and the Indian states.

It ensured the advantages of Pakistan without destroying the territorial integrity of India.

The League leaders believed that a sovereign independent state of Pakistan comprising Bengal and Assam in the North-East Zone and the Punjab, Sindh, North-West Frontier Province and Baluchistan in the North-Western Zone was the only solution of the Indian problem. This sovereign independent state of Muslim majority areas, in their opinion, would save Muslim India from Hindu domination. The Muslim majority in it would make its constitution and method of government according to its own wishes. Besides, the Muslim India would get full scope for development according to their genius. The Cabinet Mission ensured all these advantages of the proposed Pakistan without destroying the territorial integrity of India. The Muslim League was to get the grouping of Provinces it had demanded for projected Pakistan (though groups would still be within the Indian Union); each group was to have the right to draw up its own constitution, and sufficient regional autonomy to keep it free from the domination of the Hindu-majority Centre. Impressed by these merits of the Plan, Mr. Jinnah expressed satisfaction with the proposals and advised the League Council to accept them*.

It was a brave and frank document

Though the Plan had in it some serious shortcomings, yet

*I advised you to reject the Cripps proposals. I advised you to reject the Simla Conference formula. But I cannot advise you to reject the British Cabinet Plan. I advise you to accept it.' *Jinnah's Advice to the League Council.*

‘it was a brave and frank document.’ It gave evidence of the Government’s genuine desire to bring British rule in India to an end. Speaking at one of his prayer meetings, Mahatma Gandhi said that the Cabinet Mission had brought forth something of which they had every reason to be proud. Even some days later he expressed his appreciation of the Plan in these words : “After four days of searching examination my conviction abides that it is the best document the British Government would have produced in the circumstances.” Indeed, it was for the first time in the past six years of negotiations that the British statesmen had shown their sincerity of purpose. They had made every effort to iron out differences between the League and the Congress on the constitutional problem. The proposals could claim to be a just and impartial decision. Obviously, this was no mean a merit of the Plan.

It made provision for the Constituent Assembly

In the second part of the Cabinet Mission Plan, an effort had been made to meet the Indian demand for the Constituent Assembly. Though some critics of the Plan did not favour the acceptance of this British-sponsored Assembly, yet the Congress leaders expressed satisfaction with it. Rather, they looked upon it as a great concession, for it had some commendable features. The proposed constituent assembly was to be constituted on democratic basis in so far as each province was to be granted a number of seats proportionate to its population. The principle of weightage to the minorities had been discarded. The communal representation was reserved only for the Muslims and the Sikhs. No such concession was granted to the Anglo-Indians, Indian Christians and other numerous interests, which had been recognised under the 1935 Act. Besides, all the members of the Constituent Assembly were to be Indians. No non-Indian was to be included in it. There was to be no interference with the work of the Constituent Assembly either from the British Government or from the officials. The Assembly was to be sovereign within the frame-work of the scheme. Impressed by these merits of the proposed Constituent Assembly, Maulana Abul Kalam Azad thus observed in his speech of July 7, 1946 : “I do not agree with those who say that the Constituent Assembly is a trap...We have secured it as a result of our struggle and it is our great achievement. We can have our long-standing desire fulfilled through it. ...The door to Constituent Assembly is open to enable us to draw up our own Constitution. Please enter it, and complete

the task of framing the Constitution'.* Mahatma Gandhi, Sardar Patel and Pandit Jawaharlal Nehru also held similar views. Mahatma Gandhi is said to have remarked : "I know that there are many defects in the Constituent Assembly scheme, but then it is in our power to improve it. Besides, the British have chalked out this Plan with an open mind and without any reservation."

It recognised the right of the people of the Indian States

The Cripps Plan of 1942 had empowered the Princes to send the representatives of their states to the Constituent Assembly. But under the Cabinet Mission Plan this right had been offered to the people living in the Indian States. It was quite evident from the reference to the Negotiating Committee, which was to settle the method of choosing the state representatives. Looked from the democratic point of view, it was, undoubtedly, a great concession.

Provisions of Interim Government tempting

While explaining their proposals with regard to the Interim Government, the Cabinet Mission pointed out three main merits of the new arrangements. First, all the portfolios would be held by the Indian leaders enjoying the confidence of the people. Second, the government would have considerable freedom in the running of the day-to-day administration. Third, the British Government would extend the necessary co-operation to the Indian Government so that there could be smooth and speedy transfer of power. It is true that the Mission did not accept the Congress demands of making the Governor-General a constitutional head of the Interim Government, nor did they agree to the idea of making the Cabinet responsible to the Central Assembly. Despite this, there was a feeling among the Indian leaders that the Plan was offering them something of great value under the interim arrangements.

According to Frank Moraes the visit of the Cabinet Mission to India was important in another way also. The three wise men discovered the country's deep and wide-spread feeling against the British rule. They were impressed by the explosive potentialities of the situation. On their return to England, they submitted their report, which did much to accelerate the Government's decision to quit India.

* Banerjee. A. C. *The Constituent Assembly of India*, P. 116-7.

DEMERITS OF THE PLAN

With all the praises that were showered upon the Plan by the British statesmen, the Cabinet Mission scheme had some serious shortcomings. The Indian leaders pointed them out to the Mission in the course of their discussions and even expressed their fears about them.

Grouping of Provinces obnoxious

The most objectionable feature of the Cabinet Mission Plan was compulsory grouping of the Provinces. The group system was not based on any sound or even workable principle. It involved unwarranted injustice to smaller provinces, which were sure to be dominated by their powerful neighbours. There was no justice or equity in grouping the Hindu-majority province of Assam with Bengal. It was held by some that this province was being presented to the Muslim League, as a sop to Jinnah to induce him to stay in the Union. There was also a feeling that the Bengal-Assam grouping was closely linked with the British commercial interests. For, this area was the centre of India's jute industry and the tea garden, which at that time, were mainly in British hands. Gandhiji was at one time so much opposed to this arrangement that if the Assam Congressmen had started a movement on this issue, he would have joined them.

Again, the grouping of the Panjab with North-West Frontier Province and Sindh for economic reasons was hardly desirable. According to Pandit Jawaharlal Nehru, even a Muslim Leaguer in Sindh did not like this grouping, because he feared that the Punjab, being a dominant party in the Group, and more aggressive and advanced in some ways, would dominate Sindh. The people of Frontier Province were also afraid of being swayed by the Punjab. Another disheartening feature of the proposed Grouping was that the Punjab might frame a provincial constitution entirely against the wishes of Sindh or the North-West Frontier Province. It might even lay down rules nullifying the provisions for a province to opt out of a Group.

Demand of Pakistan was not completely undone

It is true that the Mission had decisively rejected Partition of British India. It is also true that they made an earnest effort to satisfy the Indian Muslims by offering them reality of Pakistan.

in a United India. But, despite all this, their Plan did not exclude the possibility of the ultimate establishment of a complete sovereign Pakistan. The League Council in its resolution of June 6, 1946 observed, "that the basis and the foundation of Pakistan were inherent in the Mission's Plan by virtue of the compulsory grouping of six muslim Provinces in Sections B and C. The Muslim League would co-operate with the Constituent Assembly in the hope that it would ultimately result in the establishment of complete sovereign Pakistan". Mr. Mohammed Ali Jinnah also pointed out that 'the foundation and basis of Pakistan are there in their own statement. Muslim India will not rest contented until we have established full, complete and sovereign Pakistan'. Thus, the Cabinet Mission Plan, instead of satisfying the Muslims with Group system, gave an open encouragement to them to strive for the achievement of their goal of Pakistan.

Restricted and curbed Constituent Assembly

The proposed Constituent Assembly, which was held to be a valuable concession to the Indians, was not free from defects. It was in no sense a representative body of the Indians in the real sense of the term. Besides, the order in which Union and the Sectional Assemblies were to meet, discuss and draft their constitutions had no logical basis. They were to frame the constitution of the Union after the constitutions of the Groups and the Provinces had been made. Further, a province could decide on remaining autonomous only after the group constitution had come into force. It was nothing short of putting the cart before the horse. The provision, whereby a province could ask for a reconsideration of the terms of the constitution at the end of each decade, put a premium on uncertainty. The powers of the Constituent Assembly were also quite limited. Shri Jai Parkash Narain expressed dissatisfaction with this proposed constitution-making machinery and opposed its acceptance in very strong terms : "We do not want such a restricted and curbed Constituent Assembly...It is far from our original idea, which was given to us by our Rashtrapati, Pandit Nehru. This Constituent Assembly is the creation of the British and it can never bring in the freedom that we have been fighting for. If, on the contrary, the Constituent Assembly is the outcome of the strength of the people, we can solve all our difficulties by an appeal to the people'."

*Jai Parkash Narain's Speech July 6, 1946.

Banerjee A. C. : *The Constituent Assembly* P. 85.

Blow to the principle of provincial autonomy

The basic provisions of the Plan gave full autonomy to a province. For, the provinces were free to form Groups with their executives and legislatures, and each Group could determine the provincial subjects to be taken in common. But, at the same time, there was an element of compulsion. The provincial representatives in the Constituent Assembly were to divide themselves into three sections to make the provincial constitutions for the provinces in each section. This, obviously, infringed the autonomy of the provinces. It is true that at a later stage the provinces could opt out of any Group, but this did not seem to be an easy matter. Maulana Abul Kalam Azad in his letter of May 20, 1946 to Lord Pethick Lawrence particularly referred to this marked discrepancy of the constitution. He wrote : "The Plan indicates that the North-West Frontier Province and Assam, which have Congress majority in them, will not be in a position to frame their constitution according to their wishes. Their representatives will have to bow before the decision of the Group. It is contrary to the principle of provincial autonomy. Moreover, I do not understand how a province or its representatives can be compelled to do something, which they do not want to do".

Injustice to the Sikhs

Sardar Vallabhbhai Patel was of the view that a great injustice had been done to the Sikh community in Cabinet Mission proposals. They had not been consulted before they were thrown, bound hand and foot, into the 'B' Group. Besides, their being put into 'B' Group without their consent placed them in a disadvantageous position. In the Constituent Assembly of Section B to which the Punjab had been assigned, the Sikhs were to have 4, Hindus 9 and Muslims 23 seats. The Muslims, outnumbering Sikhs and Hindus together, could establish in the region unfettered communal authority. The Sikhs could not expect any consideration or justice from such a Constituent Assembly. A more distressing feature of the Plan was that the Sikhs were not given the same safeguards and communal veto as had been given to the Muslims. Master Tara Singh in his letter (of May 25, 1946) to Lord Pethick Lawrence complained "...it appears that the Sikhs have been studiously debarred from having any effective influence in the Province, Group or Central Union. They are entirely ignored". The scheme was also subjected to bitter censure at ■

widely representative Sikh assembly at Amritsar on June 9 and 10, 1946. There was a strong feeling that the non-Muslims of the Punjab had been subjected to a perpetual Muslim domination and the Cabinet Mission had gone out of the way to placate the League.

Weak Centre

The Cabinet Mission Plan envisaged a weak government at the Centre. The Union Government was to deal only with foreign affairs, defence and communications. Its financial powers were also quite limited. The nationalist leaders were fully aware of this defect of the Plan, but they hoped the Union Government to grow in power. For, there was a feeling that its jurisdiction would have to be extended to make it strong and stable. Pandit Jawaharlal Nehru in his presidential address at the meeting of the All India Congress Committee observed, 'If people are opposed to any extension in the jurisdiction of the central government, the Constituent Assembly will have to take some solid steps in this direction.'

Provisions relating to States dangerous

The provisions relating to the states were mischievous. Paramountcy, according to the Plan, was to end with the attainment of freedom by British India, but states could be left out of the all India Union if they so desired. This meant a 'complete 'Balkanisation' of India. Perhaps, the British wanted to leave our country split up into hundreds of units, big or small, as they had found it three centuries before.

Three-tier Scheme impracticable

According to Michael Brecher 'the basic drawback of the Plan was its complexity and cumbersome procedure. Cripps approached the highly charged problem of constitutional settlement, as if it were an intellectual exercise. The three-tier scheme (Centre, Groups, Provinces) was an intellectual *tour de force*, but it was impracticable in the environment of a deadly struggle for power. It would have led to endless friction between the Centre, the Groups and the Provinces, and between Congress and the League, making normal administration impossible.*

Political Parties accept the Plan

In spite of the universal emphasis on the defects of the Cabinet Mission Plan, it was at first accepted by all political

*Michael Brecher : *Nehru : A Political Biography* P. 317.

parties, largely because each party expected to utilise it for its own purpose. The Muslim League followed Jinnah's advice and accepted the Plan "in as much as the basis and the foundation of Pakistan were inherent in the Mission Plan by virtue of the compulsory Grouping of six Muslim Provinces in Section B and C". On June 26, 1946 the Congress Working Committee decided that "the Congress would join the proposed Constituent Assembly with a view to framing the constitution of a free, united and democratic India". The Sikhs at first refused to send their representatives, but the assurances given by the Secretary of State and the Congress Working Committee led them to change their view. Thus, the three major communities recognised by the Cabinet Mission decided to work the Plan.

"The acceptance of the Cabinet Mission Plan by the Congress and the League," writes Maulana Azad, "was a glorious event in the history of freedom movement in India. It meant that the difficult question of Indian freedom had been settled by negotiations and agreement, and not by methods of violence and conflict. It also seemed that the communal difficulties had been left behind. Throughout the country there was a sense of jubilation and all the people were united in their demand for freedom. We rejoiced but did not know that our joy was premature and bitter disappointment awaited us."*

Elections to the Constituent Assembly

The elections to the Constituent Assembly, as provided by the Mission Plan, took place in July, 1946. Out of 210 general seats (for 11 Governors Provinces) the Congress captured 199. The remaining 11 seats were captured by the Unionist Party of the Punjab (2), Communist Party (1), Anti-Congress Scheduled Castes Federation (2) and independent candidates (6). Of 78 Muslim seats, the League captured 73. The remaining 5 seats were captured by the Congress (3) the Unionist Party of the Punjab (1) and the Krishak Praja Party of Bengal (1). The upshot of these elections was that in a House consisting of 296 members, the Congress could count upon the allegiance of 212 and the League whip was accepted by 73. Of the remaining 11 members no less than 6 were likely to follow the Congress.

*Azad : *India Wins Freedom* P. 151.

League withdraws its acceptance

The commanding position of the Congress in the Constituent Assembly made Jinnah doubtful about his success in the Assembly. He was irritated to find that on the refusal of the Congress to accept the short-term plan, Lord Wavell was unwilling to form a Provisional cabinet government with the co-operation of the League alone. His indignation was intensified by the statement of Mr. Cripps and Pethick Lawrence that Jinnah had 'no monopoly of Muslim appointments.' So on July 29, the Muslim League withdrew its acceptance of the Cabinet Mission long-run Plan and called for 'Direct Action' to achieve Pakistan. Maulana Azad holds that Nehru's statement at press conference on July 10, 1946 at Bombay was responsible for this change in the attitude of Jinnah.* Whatever be the reasons with Mr. Jinnah for this change, the 'Direct Action' decision was unfortunate. It set in motion the disastrous civil war, which was to engulf the sub-continent for the next eighteen months.

SECTION V

INTERIM GOVERNMENT, MOUNTBATTEN PLAN
and

(The Indian Independence Act, 1947)

Direct Action and Interim Government

Since the Congress ultimately accepted both the long-term plan and the proposals for the Interim Government, the Viceroy on 14 August, 1946 invited Jawaharlal Nehru to form Interim Government at the Centre. Mr. Jinnah, on the other hand, called upon the Indian Muslims to observe 16 August as 'Direct Action Day'. He, however, did not make it clear what the programme would be. To the surprise of all, a systematic killing and looting of the Hindus of Calcutta started on 16th of August and continued for the next four days. According to official estimates 4,000 people were killed and 15,000 injured. Besides, many bodies were thrown into underground sewers, and the streets became impassable because of the stench they emitted. The number of people charred to death in burning houses and those thrown into the Hooghly could not be

*According to Maulana Azad, Nehru (who had become President of the Congress at that time, told the press representatives at Bombay that Congress had agreed only to participate in the Constituent Assembly and regarded itself free to change or modify the Cabinet Mission Plan. This statement of the Congress President was his greatest mistake. Jinnah exploited this statement in his favour and withdrew the acceptance of the League.

counted. The aged, women, or children, none was spared. In the opinion of Dr. Rajendra Prasad, "This was perhaps the bloodiest carnage witnessed in India since the sacking of Delhi by Nadir Shah".* Maulana Azad, who happened to be in Calcutta in those days, writes : "The 16th of August was a black day in the history of India. Unprecedented mob violence plunged the great city of Calcutta into an orgy of bloodshed, murder and terror. Hundreds of lives were lost. Thousands were injured and property worth crores of rupees destroyed. The city was in the grip of *goondazs*.†

The British owned paper *The Statesman* of Calcutta placed the blame squarely on the League. On August 20, 1946, when the killing had subsided, it wrote, "The origin of the appalling carnage and loss in the capital of a great Province—we believe the worst communal riot in India's history—was a political demonstration by Muslim League. The bloody shambles to which this country's largest city has been reduced is an abounding disgrace, which...has inevitably tarnished seriously the all-India reputation of the League itself". London papers, including *The Times*, wrote in the same strain.

League's entry into the Interim Government

While the carnage continued in Calcutta, Noakhali, Bihar and at other places, attempts to rope in the League at the Centre also went on. In this Lord Wavell played a leading part, for, without the Leaguers in the Government, he did not find himself in a comfortable position. The Viceroy held a series of conversations with Jinnah in which he persuaded him to join the Government. Pt. Nehru and Maulana Azad had already issued an appeal to Mr. Jinnah to co-operate with the Congress in the Interim Government. Consequently, Mr. Jinnah nominated five persons viz. Liaquat Ali, Abdur Rab Nishtar, I. I. Chandrigar, Ghanzafar Ali and Joginder Nath Mandal of Scheduled caste, to join the Interim Government. Mandal's nomination was, in fact, an answer to the Congress nomination of a non-Muslim. Though Muslim League sent its nominees in to the Interim Government, yet it had no intention of working in co-operation with the Congress. It became crystal clear, when Ghanzafar Ali, one of the League nominees, said in his speech : "We are going into the Interim Government to get a foothold to fight for our cherished goal of Pakistan. The Interim Government

*Dr. Rajender Prasad : *Autobiography* P. 590.

†*India Wins Freedom*, P. 159.

is one of the fronts of the Direct Action campaign.*

The entry of the League into the Interim Government, therefore, proved more unfortunate. The League nominees began to play the role of King's friends and adopted the policy of fighting from within. Mutual conflicts rendered the normal functioning of the Government impossible. Sardar Vallabhbhai Patel found the Central Government in a state of paralysis.' To worsen the situation, in December 1946, the League completely boycotted the Assembly in its first session. Their empty benches raised new problems. Communal disturbances were also on the increase. In a last bid to break the deadlock in the Interim Government, the British Prime Minister invited the leaders of the Sikhs, the Congress and the League to meet him at London. Nehru represented the Congress, Baldev Singh the Sikhs, and Jinnah and Liaquat Ali the League. The discussions at London could not prove fruitful.

Attlee's Statement of February, 1947

The situation created by the Congress-League differences was, indeed, very difficult. It placed Lord Wavell in an embarrassing position. He could not easily dismiss the League nominees in the Interim Government, for it would have turned the Muslim world against Britain. At the same time, the League representatives were unwilling to co-operate with the Congress in the Interim Government. Drift and delay could only lead to chaos. Mr. Attlee did not want to keep the Indians in suspense about the British intention. He thought it necessary to fix a date for the withdrawal of British power from India. Under such unhappy and abnormal circumstances, the British Government took a bold decision. On February 20, 1947, Mr. Attlee made a statement, which astounded India and the world. He declared that it was the definite intention of the British Government to "effect the transfer of power to responsible Indian hands by a date not later than June 3 1948. If the League does not join the Constituent Assembly, the British Government will have to consider to whom the powers of Central Government of British India should be handed over on due

*According to Michael Brecher Jinnah's motives in joining the Government appear to have been two-fold. From the negative stand point, continued League boycott would perpetuate the Congress monopoly of power at the centre and would jeopardize the goal of Pakistan. Added to this was a desire to demonstrate that the two communities could not function in harmony and that Pakistan was the only way out of the impasse.

date, whether as a whole to some form of Central Government for British India, or in some areas to the existing provincial governments or in such other way as may seem most reasonable and in the best interests of the Indian people."

The announcement was well received but there was no jubilation. For, the Indian statesmanship was not prepared for such a sudden assumption of power. Besides, the statement "reversed the decision of the Cabinet Mission to maintain the unity of India". It represented an indirect concession to the League demand for Pakistan. The prevalent feeling in London by February, 1947 seemed to be that Pakistan was the only way out of the *impasse*. This made Jinnah's attitude more stiff and organised riots and ghastly massacres in Bengal, Assam, N.W.F. Province and the Punjab were intensified.*

The Mountbatten Plan July, 1947

Simultaneously with the statement of Mr. Attlee in February, 1947, Wavell's "war time" appointment was terminated.† Lord Louis Mountbatten, formerly the Allied Supreme Commander in South-East Asia, was named his successor to effect the transfer, which constituted a formidable task.‡ The communal frenzy in the Punjab, League agitation in the Frontier Province and Assam, the virtual paralysis of the Interim Government, a sharp decline in the efficiency of administration etc. etc. were some of the serious

*Attlee's historic declaration introduced two new elements into the turmoil of Indian politics. By indicating a specific date for the transfer of power, the British Prime Minister added a sense of urgency to the struggle for the succession. By remaining vague about the successor (s) and by mentioning the Provincial Governments as possible recipients of legal authority, he galvanized the parties into vigorous action. *Michael Brecher : Nehru : A Political Biography* P. 338

†Attlee's dismissal of Wavell on the ground that it was a war-time appointment has not convinced the critics. The cause of dismissal, writes Campbell Johnson, was the differences between the British Prime Minister and the Viceroy over the latter's two-stage military evacuation Plan. Maulana Azad was of the view that Attlee did not like Wavell's insistence on the point that communal problem be solved before the transfer and asked the Viceroy to resign.

‡When some ninety years earlier India had come under British Crown, Queen Victoria had reigned ; and now, by a strange quirk of history, her great grandson was entrusted with the job of ending that association. *Frank Morles : Jawaharlal Nehru*, P. 327.

problems. A series of British Government pronouncements viz., Cabinet Mission Plan, the declaration of 6th December, 1946, Attlee's statement of February, 1947, had created more complications and confusion. It was also not easy to reconcile the Congress and the League to any new plan. But much to the credit of his ability and drive, Mountbatten did his job well. He handled the various intricate problems with a skill, which was simply admirable. He was, however, considerably assisted by his noble wife in the discharge of his delicate and difficult duty.

Soon after his arrival in India, the new Viceroy held discussions with Indian leaders and inferred that there was no chance of the Congress and the League reaching an agreement on the basis of Cabinet Mission Plan. Now, it was either Partition or chaos. To delay Partition would be to intensify the orgy of civil war. Hence, Lord Mountbatten came to the conclusion that Partition alone could solve the Indian problem.

But the idea of partition was extremely repugnant to the Congress, which had always stood for Indian unity. To reconcile its leaders to the plan of partition was a difficult task. However, by his personal contacts, pleasing manners, amiable disposition and friendly discussions, he impressed upon the Congress leaders (Patel, Nehru and Gandhiji) that partition of India was inevitable. The difficulties in the Interim Government, the ever-increasing violence in the country, the idea of building up a strong India without League were some of the arguments that Lord Mountbatten is supposed to have advanced in favour of his proposition. To Nehru and Patel it began to appear that partition was preferable to chaos and to an India drowned irrevocably into a sea of anarchy. Gandhiji also gave up his opposition to the idea of "partition. The Congress leaders, with heavy hearts, at last gave their acceptance to the plan of partition. The role of Mountbatten's wife in reconciling the Congress leaders to the idea of partition was also commendable. To quote Dr. Ishwari Prasad : " By remarkable adaptability of character and by her charming manners she won the hearts of even the greatest adversaries of the land of her birth.*

After the opposition of the Congress had been worn out, Lord Mountbatten produced a plan, which provided for the

*Dr. Ishwari Prasad : *History of Modern India* P. 470.

immediate partition of India. Thereafter, he left for England to get his plan approved by the British Cabinet. Mountbatten's "Plan of Partition" was readily accepted by the Cabinet, which found it more useful to the interests of England. The chief consideration with them seemed to have been that Pakistan would offer them such a permanent sphere of influence, as would enable them to influence the attitude of India towards England. Anyhow, after the Plan had been accepted, the Viceroy came back to India and announced it on June 3, 1947.

The main features of the Plan

The Viceroy's Plan, broadly speaking, was a compromise between *Akhand Hindustan* and Pakistan. Its important features were, in brief, the following :

(a) Partition of India was the only possible solution of the Indian problem.

(b) The three disputed provinces viz. Bengal, Assam and the Punjab were also to be partitioned.

(c) A referendum would be held in the N.W.F. Province to decide whether that Province would like to join Pakistan or India.

(d) A referendum would be held in the district of Sylhet (in Assam) also to determine whether the district in question would like to remain a part of Assam or join East Bengal, which would be a part of Pakistan.

(e) The Legislative Assemblies of the Punjab and Bengal were to decide whether these Provinces should or should not be partitioned.

(f) The Plan also indicated the willingness of Britain to transfer power before June, 1948. This was to be on a Dominion Status basis and the successor or successors could decide through the Constituent Assembly or Assemblies whether or not to stay in the Commonwealth.

The Mountbatten Plan was accepted by the political parties of India and was soon put into operation. The Legislative Assemblies of the Punjab and Bengal decided in favour of the partition of their provinces. Each of them was divided into two parts.

East Punjab and West Bengal remained the parts of the Indian Union, while West Punjab and East Bengal joined Pakistan. Sylhat was incorporated into East Bengal and referendum in N.W.F. Province decided in favour of Pakistan.

The Indian Independence Act, 1947

After the Viceroy's plan had been accepted, the constitutional formalities were hastily completed in London. The British Government, in consultation with the Viceroy, prepared a draft of the Indian Independence Bill. The Viceroy, with the approval of His Majesty's Government, gave the opportunity to the Indian leaders to discuss the Bill. The leaders of both the Congress and the Muslims League met separately in two adjacent rooms for the purpose. Their comments were given due consideration in the final revision of the Bill. On July 4, the Indian Independence Bill was introduced in the House of Commons. In less than a fortnight (by 16th July) it secured the approval of both the Houses of Parliament. It received the Royal assent on 18th July. According to Norman D. Palmer, "Seldom in the history of British Parliament had a measure of such epochal significance been put through so speedily and with so little debate."* The Secretary of State for India observed: "This is a bill unique in the history of legislation in this country. Never before has such a large portion of the world population achieved complete independence through legislation alone."† It was quite brief in its contents (only 20 clauses) but was symbolic of the end of an epoch. Its important provisions were as under :—

(a) Two independent Dominions, known respectively as India and Pakistan, shall be set up from the 15th August, 1947. All powers previously exercised by the British Parliament and Government in British India shall be transferred to the Governments of India and Pakistan on the due date.

(b) The territories of the two Dominions were clearly defined. Pakistan was to comprise Sindh, British Baluchistan, N. W. F. P., East Bengal and the West Punjab. The exact boundaries of the West Punjab and East Bengal would be determined by a Boundary Commission.

*Norman D. Palmer : *Major Governments of Asia* P. 298.

†Banerjee A.C. : *The Constituent Assembly* P. 15.

Government announced their decision to transfer power to responsible Indian hands by June 1948, the latest. But all that happened between 20th February and 3rd June impressed upon them the urgency of the quitting India even much earlier. Hence, the 15th of August, 1947 became the Independence Day of India. The factors and forces, which compelled the British authorities to part with power were various and manifold and they can be studied as under :

Intense nationalism and desire for freedom

In the forties of the present century, the entire Indian nation was aflame with a desire for independence. Political freedom was no longer the objective of the Congress alone but of all sections of India. Whether Hindus or Muslims, whether Sikhs or Scheduled castes, whether politicians or civil servants, all wanted to get rid of the foreign yoke. The conception of nationalism, as Attlee himself admitted, had continually grown strong and now permeated even the soldiers, who had rendered splendid services in the war. According to Maulana Azad, "there was no longer anything secret about the upsurge of freedom. Men and officers of Defence forces declared openly that they had poured out their blood in the war on the assurance that India would be free after the cessation of hostilities. This assurance must now be honoured." Even the political parties were agreed on the demand of freedom, though they differed only on the question whether free India should be united or partitioned. Besides, 'Quit India' movement, I. N. A. Trials, Naval Revolts etc. etc. had clearly indicated the change of temper in the country. Under such circumstances, it was quite difficult for the British to delay the grant of freedom to the Indians, who were inspired by high ideals of patriotism, sacrifice and nationalism.

Weakened position of England

As a result of the Second World War, the position of England had been considerably weakened. Her economy had been seriously impaired and man-power dwindled. This decline of British power in the forties had rendered her incapable of bearing the enormous drain, economic and military, which the continued control over India would have entailed. The inadequacy of the British resources to sustain the burden of India was a very big consideration with the authorities influencing their decision. General Sir Francis Tuker is said to have remarked : "Ultimately,

we found that this garrison commitment was more than the industrial needs of our impoverished country could stand. That was one very strong reason for our leaving India and leaving it quickly." Besides, any fresh effort to strengthen British control in India by employment of more I. C. S. men and reinforcement of British troops would have proved dangerous. It would have hindered the reconstruction of Britain and roused the world opinion against an England pledged to grant independence to India after the war. Hence, the weak position of England was a very strong factor compelling the British to quit India. According to Michael Brecher the weakness of Britain was so strong a factor in favour of India that transfer of power could not have been postponed even if Conservatives had returned to office in 1945.

Favourable public opinion in England

During the preceding thirty years the trend of the British public opinion towards India had considerably changed. And it had been well evinced by the success of Labour Party in 1945, pledged to grant freedom to India. There were large and powerful sections of British society, which found no justification in prolonging the British control over India. Rather, they had developed "a guilt complex about continued British rule in India." And this feeling of theirs had been strengthened by the experiences of the war. There was also a growing positive sympathy for the aspirations of Indian nationalism. Evidently, in the face of such a climate of public opinion in England, the authorities could not easily withhold the power, particularly when its retention meant an excessive burden on England's resources.

Danger of Communism

According to Michael Brecher the early departure of the British from India was necessitated also as a safeguard against the spread of Communism in India. In the forties of the present century, there was a growing fear in London that further delay would open the road to greater strife from which Communism might emerge the victor. Labour leaders believed that the Congress was in danger of disintegration, and that would create a vacuum for Communist influence. Attlee is said to have told Lord Mountbatten in December, 1946 that "the Government is most unfavourably impressed with the political trends affecting both the Congress and the Muslim League. If we were not very careful, we might well

find ourselves handing India over not simply to civil war, but to political movements of definitely totalitarian character. Urgent action is needed to break the deadlock.”*

International pressure on United Kingdom

The world at large, especially America and Russia, also pressed for the British departure from India. During the years of war, Mr. Roosevelt, Chiang Kai-shek and other statesmen of the allied countries had often pointed out the urgency of granting freedom to India. The British Government had made some efforts to break the deadlock and had repeatedly assured the Indians and the Allies that freedom would be given on the cessation of hostilities. Now that war was over, the world expected Britain to fulfil the long-standing promise. Not only that, the statesmen of America and Russia were actually pressing for an early withdrawal of the British from India. During the debate on Attlee's historic pledge to transfer power, Sir Stafford Cripps openly stated that the growing pressure from the international community, notably from United States and Soviet Union, had made the retention of power increasingly untenable.

Contributions of the British Raj and the National Congress

Viewed in the longer perspective of history, it would be quite apt to remark that the British *Raj* and the Congress also made a commendable contribution towards the Indians' attainment of freedom. Both these institutions created a common purpose, the quest for freedom for the Indians and thereby gave them a key to its attainment. The administrative integration, the transport system, English as medium of communication, secular education, etc. etc.—all that was given by the British *Raj* unconsciously—developed among Indians the sense of national unity. And on the foundations thus laid by the British, the Congress, especially Gandhiji, superimposed the symbols of a common purpose, such as the nation-wide *hartals*, constructive work, a national flag, ■ national anthem, and the most important mass non-violent-non-cooperation. The civil disobedience movement strengthened the common bonds and maintained a continuous focus on the goal of national freedom. Ultimately, the common purpose spread throughout the country and made it difficult for the British to keep

* Michael Brecher's *Nehru ; A Political History* P. 372.

India in bondage. To quote Michael Brecher : "In short, independence of India was the natural and inevitable outcome of the process of creating natural consciousness and common purpose, accomplished by the *Raj* unconsciously, and by the Congress consciously, over an extended period of time. In this sense the British *Raj* contained within itself the seeds of its own destruction."*

Advent of Labour Government

To the good luck of the Indians, the advent of the Labour Party in power hastened the process of British withdrawal from India. Before coming Party office, the Labour leaders had promised to solve the Indian problem sympathetically, and after their victory at polls their attitude on this point was unchanged. In reply to Azad's message of congratulations, they had given a very favourable assurance. Hence, soon after coming to power, Mr. Attlee showed his anxiety for solving the Indian problem and strained every nerve to accomplish this job successfully. According to Maulana Azad, Attlee's intentions were very pure. His decision was governed by his determination to help India attain independence. The situation in India was such that, in spite of our opposition, the British could have governed this country for another decade. The French continued in Indo-China for almost ten years even though France was much weaker than Britain. But Attlee was not the man to exploit the Indian situation for the British interests. He did not want to adopt a policy, which would lay him open to any charge. Hence, credit must be given to the motives of Labour Government, which carried through the withdrawal speedily and gracefully.†

Navals Revolts (1945-46)

As ill luck would have it, the British by their acts of omission and commission alienated the military services in India. During the winter of 1945-46 the Indian soldiers, already inspired by the spirit of patriotism, became vigorous in their activities. On February 19, 1946, three thousand naval ratings of the Royal Indian Navy rose in violent protest against the British. A number of British officers and men of the fighting services were attacked by the demonstrators. The trouble spread very rapidly. The Congress

*Michael Brecher *Nehru—A Political Biography* P. 373

†Azad : *India Wins Freedom* P. 178

tricolour was hoisted on some naval sloops in the harbour and British personnel were forced off the ships. By the next day Karachi, Calcutra, Delhi and Madras also became the centres of similar troubles. The situation became explosive, when on February 21, over a thousand men in the Royal Indian Air Force camps in Bombay came out on a sympathetic strike. Though the situation was controlled with the help of the Indian leaders, yet the feelings of Indian forces had been expressed. As a consequence, the British faith in the loyalty of Indian forces was shattered and departure from India at the earliest opportunity was considered the best course under the circumstances.

Acceptance of Mountbatten Plan

The acceptance of the Mountbatten Plan both by the Congress and the League in July 1947, ensured the departure of the British from India. Hitherto, the differences between the League and the Congress on the question, whether free India should be united or partitioned, had given the British a handle to withhold the transfer of power to the Indians. With the acceptance of the plan of partition, as embodied in the Governor-General's scheme, that hurdle was at once removed. Mountbatten immediately declared that the scheme should be brought into effect as quickly as possible. And much to the credit of his ability, he carried out the task of partitioning within less than three months. By the beginning of August, 1947 all the major problems were solved and on the 14th August, 1947, India was divided into two independent states. At 12 midnight on 15th August, 1947 the Indian Dominion was born. The country became free and the British left gracefully.

FURTHER READING

1. *Maulana Azad* : India Wins Freedom.
2. *Michael Brecher* : Nehru : A Political Biography.
3. *Rajindra Prasad* : Autobiography.
4. *Penderal Moon* : Gandhi and Modern India.
5. *Penderal Moon* : Divide and Quit.
6. *V. B. Kulkarni* : British Dominion in India and After.
7. *Frank Moraes* : Jawaharlal Nehru.
8. *A. K. Majumdar* : Advent of Independence.

9. *K. M. Munshi* : Indian Constitutional Documents (Munshi Report) Vol. I.
 10. *A. C. Banerjee* : The Constituent Assembly.
 11. *Jawahar Lal Nehru* : The Discovery of India.
 12. *R. P. Masani* : Britain in India.
 13. *Pattabhai Sitaramayya* : History of Indian National Congress Vol. II.
 14. *C. H. Phillips*. India.
 15. *Menon* : Transfer of power.
 16. *Leonard Mosley* : The Last Days of the British Raj.
 17. *Lord Attlee*. As it Happened.
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CHAPTER 13

Partition of India and Birth of Pakistan

The partition of India and the consequent emergence of Pakistan as a new nation was an unfortunate development in the Indian politics of the twentieth century. Penderel Moon, Churchill, Keith, Callard and some other foreign writers are of the opinion that the British, till the closing year of their rule in India, were anxious to preserve her unity and integrity. But the differences between the Hindus and the Muslims became gradually so acute as to render the partition inevitable. The Indian writers like Mahatma Gandhi, Jawaharlal Nehru, Maulana Azad, V. P. Menon, Ram Gopal and V.B. Kulkarni do not agree with this view of the foreign writers. In their opinion, the differences between the Hindus and the Muslims were neither fundamental nor irreconcilable. Had the British statesmen been sincere in their efforts, the rift between the League and the Congress could have been healed and the division of the sub-continent, in consequence, averted. But, unfortunately, our foreign rulers did not act as sincere peace-makers. On the contrary, they deliberately adopted the policy of 'Divide and Rule' to sow ill-will between the Hindus and the

Muslims and then worked upon the Muslim communalism and fears in such a clever way as to make the division of India unavoidable.

I—MUSLIM COMMUNALISM BEFORE THE BIRTH OF MUSLIM LEAGUE

Great Revolt of 1857 and British policy of 'Divide and Rule'

Before the British rule was established in India, the Hindus and the Muslims lived on amicable terms. No hatred or animosity vitiated their relations, nor was there any desire among the members of these communities to have their separate homelands. The Muslims of the Indian sub-continent were also not alien in the sense that the Europeans, who came to the country were ; for the reason that an overwhelming majority of them (Muslims) are derived from the Hindu stock. Though the Rajputs, the Marathas and the Sikhs at times waged prolonged warfare against the tyrant and fanatic Muslim rulers, yet it did not affect Hindu-Muslim amity and their mutual confidence. Hindu brain and valour continued to serve the Muslim monarchs, and the Muslims frequently worked on posts of position and responsibility under the Hindu rulers. Some of the most trusted counsellors of even Maharaja Ranjit Singh, the Sikh ruler of the 19th century, were Muslims by faith. His foreign minister Faqir Aziz-ud-Din was a Musلمان of Bokhara.

The British, during the first century of their rule, made no concerted effort to disturb the communal harmony in India. Perhaps, they did not feel the necessity of that. But after the Great Revolt of 1857, the policy of 'Divide and Rule' became the basis of their Indian administration ; the chief reason being that the British looked upon the Mutiny as a great effort of the Indians to drive them (British masters) out of their country. Since the bureaucracy held that the Muslims were mainly responsible for the Revolt, the authorities, thereupon, turned fiercely on them. They were denied all opportunities for progress and were gradually excluded from official posts. The Muslims' aversion to the English system of education also kept them out of various new professions. In consequence, the Hindus monopolised the Government services and made ■ marked progress in the educational and economic spheres.

Sir Syed Ahmed Khan and M.A.O. College, Aligarh

Some Muslim leaders of the time, particularly Sir Syed Ahmed Khan and Ameer Ali, did not appreciate the conservative attitude of their co-religionists to the new system of education, and precisely for two reasons : First, it debarred the Indian Muslims from getting high government posts ; secondly, it stood in the way of their mental progress. These Muslim leaders were also distressed to find that the Muslims had forfeited the confidence of the British rulers. Hence, they made it their mission in life to promote education among Muslims and agitate for a share for Muslims in Government services. Sir Syed Ahmed even decided to regain the confidence of the British, which his co-religionists had foolishly forfeited.

Sir Syed Ahmed Khan was a descendant of Hazrat Hussain, the grandson of the Prophet Mohammed in the 36th degree. He had spent his childhood and youth at the Mughal Court. Though he did not know English, yet he was otherwise a man of letters. He was also a great admirer of English education. During the Revolt of 1857-58, he had lent full support to the British and had won high praises and substantial material rewards from the Government for his services.* (To extend the facilities of higher education to the members of his community, Sir Syed Ahmed Khan established the Mohammedan Anglo-Oriental College at Aligarh in 1875. Several Muslim high schools were also opened at other places in the country. Since the Muslims in general had no interest in English education, the Aligarh College failed to attract many Muslims for degree courses. Between 1882 and 1887, a period of intense propaganda for employment of Muslims in Government departments, the Aligarh College produced only ten graduates. The contribution of Allahabad, Calcutta and Punjab Universities to the education of the Muslims was more significant. According to the figures collected for 1898-1902, the total number of Muslim graduates in India was 1184. Out of this Aligarh's contribution was 220, Allahabad's 410, Calcutta's 398 and the Punjab's 225.

*He was granted a special pension of Rs. 200/- per month, which was to continue throughout the life of his eldest son, and he also received symbolic rewards in kind. In 1869, he was awarded the Third Class of the Star of India. Another reward given him the same year was a sum of £ 250/- per annum for two years 'in consideration' of his services during the Mutiny. *Ram Gopal : Indian Muslims (A Political History)*. P. 45.

Though the Aligarh College could not achieve desired results in the educational sphere, yet it gradually became a centre of Muslim communalism. Under the inspiration of its English Principals, the *Aligarh Institute Gazette* specialised in abusing and deriding political activities. It published and reproduced articles condemnatory of India's political demand for holding of the Civil Services Examination simultaneously in England and India. Sir Syed Ahmed Khan, who gradually came under Mr. Beck's spell (M.A.O. College Principal) also criticised the Congress demands for simultaneous examination and even called it an organization of Bengalis.

Patriotic Association and Defence Association

Aligarh's opposition to the system of competitive examinations was not unfounded. The Muslim leaders of the time knew it well that their co-religionists, on account of their backwardness, could not get a due share of higher posts through competition. The Mohammedan Civil Service Association was, therefore, formed in 1883, which demanded jobs for Muslims through a system of selection. (Sir Syed also formed another organisation, the United Indian Patriotic Association. The aims of this Association, as reported in the *Aligarh Institute Gazette* dated August 28, 1888 were : (a) to strive to preserve peace in India and to strengthen the British rule ; (b) to provide information to the members of Parliament and the newspapers of Great Britain and its people with regard to the Muslim attitude towards the aims, objects and activities of the Congress; (c) to keep the British Government informed of the societies, which were opposed to the objects of the Congress ; (d) to remove anti-British feelings from the hearts of the Indians.)

Beck was the honorary editor of the *Patriotic Association*, and in that capacity he prepared articles and extracts for distribution in Britain and India. But, much to his discredit, he did not act with responsibility and moderation. He seldom argued his case rationally and often indulged in palpable falsehood. Despite all this, his efforts failed to yield the desired results. Mr. Beck, then, with the support of Sir Syed, founded another organisation and named it the Mohammedan Anglo-Oriental Defence Association. The main objects of the Defence Association as summarised by Ram Gopal were : (1) to acquaint the British people in general and the Government in particular with the views of the Muslim India and to protect the political rights of the Muslims ; (2) to support measures designed to strengthen British rule in India, (3) to

prevent political agitation from spreading among Muslims; (4) to help the Government in maintaining peace and to foster a spirit of loyalty.

Mr. Beck, who had chosen to act as the Secretary of the Defence Association, soon became the chief man of the organisation. In 1895, he addressed the annual meeting of the London Branch of the Association. The gist of his speech, as published in the *Aligarh College Magazine*, is as under :

"A friendship between the British people and the Muslims was possible, but not between Muslims and the followers of other religions ; for example, the followers of Shivaji and those of Guru Gobind Singh would never agree with the Muslims in accepting Aurangzeb as their hero.....Muslims would never accept a system of government in which the Hindu majority would rule over them.....They were opposed to the Congress demands with regard to the competitive examinations."

Under the inspiration and influence of Mr. Beck, Sir Syed also adopted the anti-Congress policy. When Indian National Congress demanded reduction in the army expenditure, he did not favour it. Rather, he said that it should be increased.

Communalist and Nationalist Muslims

In spite of the anti-Congress policy and politics of the Aligarh College, a large number of Muslims continued to support the Indian National Congress. The attendance of Muslims at Congress sessions also increased year after year. The first Congress session was attended by only a few Muslims ; at the second, there were 33 Muslims out of the 431 delegates ; in 1889, their number rose to 258. Besides, the third Congress was presided over by Badr-ud-din Tyebji, the President of the Anjuman-i-Islam of Bombay. A considerable portion of his presidential address was devoted to the Muslims, whom he repeatedly exhorted to work shoulder to shoulder with their fellow countrymen of other creeds and races. He also pointed out that co-operation between the Hindus and the Muslims—the two principal communities of India—was needed for the common benefit of all. The same attitude was emphasised at the Congress session of 1890 by Syed Sarf-ud-din, who advanced various arguments to remove the doubts of the communalist Muslims. But all these efforts of the

nationalist Muslims proved unavailing. The communalist section of the Muslim community continued to send, from time to time, its representatives to the authorities to impress upon them their views on various issues and asked for the protection of their interests.

Widening of gulf between the Hindus and the Muslims

Unfortunately for India, even after the deaths of Sir Syed and Mr. Beck, Aligarh College continued to work as a centre and citadel of Muslim communalism. Mr. Morrison, who succeeded Mr. Beck as Principal of the college, kept alive the policy and politics of his pre-decessor.* He often declared that democracy in India would reduce minorities to the position of hewers of wood and drawers of water. He also created in the minds of the Muslims many an unfounded fear to be deepened by the Urdu-Hindi controversy that raised its head again in U.P. The government on its part started a mischievous propaganda against the nationalist leader, Tilak. They dubbed him as a Hindu leader hostile to the Muslims. The first Briton to do so was Sir V. Chirol, the author of the *Indian Unrest*, who said in his book : "Tilak not only convoked popular meetings in which his fiery eloquence denounced the Mohammadans as the sworn foes of the Hindus, but he also started an organisation known as the 'Anti-Cow-Killing Society', which was intended and regarded as a direct provocation to the Mohammadans." Though this was nothing but a complete fabrication, yet it went a long way in impairing the Hindu-Muslim relations. The Partition of Bengal, preceeded by Lord Curzon's utterances and followed by communal riots, widened the gulf between the two communities still further.

Simla Deputation and demand of communal representation

In the summer of 1906, the Government of India and the U.P. Government, with the active co-operation of the Principal of the Aligarh College Mr. Archibald, made another diplomatic move to embitter the Hindu-Muslim relations. They had got a scent of the nature of reforms to be introduced by the British Government in the near future. Hence, through Mr. Archibald they instigated the Muslim leaders like Nawab Mohsin-ul-Mulk and Haji Mohammed Ismail to send a petition to the Viceroy.

*Mr. Morrison had already been a professor at the Aligarh college and was trained by his predecessor for political work. Before his advent in India he had started a branch of the Patriotic Association in London.

stressing that Muslims in India could benefit only from the system of nomination. The principle of election, if introduced, would cause a great injury to their political interests. It is said that Mr. Archibald promised every help to the Muslim cause on the condition that he himself remained behind the scenes.

Mohsin-ul-Mulk, who perceived in the advice of his British friend benevolence for the Muslims, obtained in a short time the signatures of about 4,000 Muslims on a petition to be formally presented to the Viceroy by a Muslim deputation. He then brought together 35 prominent Muslims from different parts of India. These Muslim leaders led by Sir Aga Khan, the head of Khoja community, waited on the Viceroy on October 1, 1906, and presented their address believed to have been drafted by Mr. Archibald.

The main demands made in this long address were : (a) employment of a due proportion of Muslims in Government services, (b) provision of separate electorates to give due representation to the Muslims in Legislative Councils, (c) Muslims should be given seats on the Bench of every High Court and Chief Court, (d) elimination of the competitive element in recruitment to higher services, (e) assistance should be given to the Muslims in founding a Muslim University. Though the deputationists' claims and the arguments advanced in their support were hardly tenable, yet the Viceroy Lord Minto heartily welcomed them. He saw in it the opportunity of driving a permanent wedge between the Hindus and the Muslims. He is said to have read out to the deputationists his reply, which he had prepared before hand. Maulana Mohammed Ali had aptly remarked that the deputation was a 'command performance'.

This 'unfortunate development' in the Indian politics sent a thrill of joy in the hearts of the bureaucracy. A section of press in Britain hailed it as a great achievement of Minto's regime. The wisdom of Indian Muslims was praised, while the Congress and Bengali agitators were ridiculed. The Viceroy's wife (Mary Minto) in the evening of the same day received a letter from an official, which said, ".....a very big thing has happened to-day. A work of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of sixty-two millions of people from joining

the ranks of the seditious opposition".* Lady Minto herself records in her diary of October 1, 1906, "This has been a very eventful day"; as some one said to me, "an epoch in Indian history". The true implications of this 'command performance' were aptly described by Aga Khan himself, who was in a unique position to do so. He wrote: "Lord Minto's acceptance of our demands was the foundation of all future constitutional proposals made for India by successive British Governments, and its final, inevitable consequence was the partition of India and the emergence of Pakistan."†

II—MUSLIM LEAGUE AND ITS POLITICS

Even after creating a gulf between the Hindus and the Muslims, the bureaucracy was not sure of the loyalty of the communalist Muslims to the British rule. They had every fear of their return to the Congress, and for this there were two main reasons: First, there were yet many Muslim leaders in the country, who not only denounced the British policy of 'Divide and Rule', but also urged the Muslims to extend their co-operation to the Congress in its struggle for national interests. Secondly, the country did not have at that time any political, social or communal organisation other than the Indian National Congress. The Aligarh's Mohammadan political organisations, which came into existence very recently had not yet attained an all-India status. Under the circumstances, the anxiety of the British rulers was to see the formation of a purely Muslim all-India organisation to accommodate the Muslim communalists and their wishes. They had thrown a feeler to that effect to the Simla deputation.

Foundation of Muslim League

Encouraged by the success of the Simla Deputation, the communalist Muslims became more active in their political activities. Nawab Salimullah Khan of Dacca formally proposed the formation of a political organisation under the name of the 'Muslim All-India Confederacy' and invited Muslim leaders to Dacca for a meeting on December 30, 1906. Nawab Waqar-ul-Mulk presided over the meeting of this first all-India Muslim gathering. After prolonged discussions and deliberations, the delegates resolved to form a political organisation but preferred

* *Lady Minto : India, Minto and Morley*, P. 47-48

† *The Memoirs of Aga Khan* P. 94.

to name it as 'The All India Muslim League.' Thus came into existence the Muslim organisation, which played a significant role in the Indian political field during the following forty years and was, in no small a measure, responsible for India's partition.

At its first annual session, held in Karachi (1907), the delegates framed League's constitution with the following as its objects : (a) to promote among Indian Muslims feeling of loyalty towards the British Government and to remove any misconception that may arise about the intentions of the Government with regard to any of its measures, (b) to protect the political and other rights of the Indian Muslims and to place their needs and aspirations before the Government in temperate language, (c) so far as possible and without prejudice to the objects mentioned above, to promote friendly feelings between the Muslims and other communities. Sir Sultan Mohammed Shah, popularly known as Aga Khan, was elected as its permanent president. Since Aga Khan's pre-occupations elsewhere left him little time for day-to-day work of his office as the president of the League, a working chairman was also appointed in 1908.

The All India Muslim League, as is evident from the circumstances leading to its foundation, was inspired and sponsored by our British rulers. It was a communal body from its very inception. Its objects differed from those of the Congress. Rather, it was formed to oppose the Congress in political sphere. The demands that it put forth in its annual session of 1908 were just the opposite of the demands of the Congress. The nationalist Muslims were unhappy over this development. Some of them even openly deprecated it. Nawab Sadiq Ali Khan is said to have observed : "It is not good for Mohammadans to be taught that their political interests are different from those of the Hindus. From a Mohammadan point, too, that principle is fraught with mischief."

Reforms of 1909 and special concessions to the Muslims

After the Muslim League had come into existence, the effort of the Government was to strengthen its hold on this Muslim organisation. It was also anxious to turn the communalist Muslims into loyal servants of the British Crown. To achieve this object, it granted the Muslims, through its reform scheme of 1909, some special concessions with regard to franchise

and representation. On the ground of their alleged political importance, the Muslims were ensured proportionate representation through communal electorates. It meant that a certain number of seats in the Legislative Councils were to be filled exclusively by Mohammadans, and for the purpose of filling such seats, special Mohammadan electorates were to be constituted. The Muslims were also allowed to retain their right to vote in the general electorates. Besides, the Muslims, who paid income-tax on an income of Rs. 3,000/- or more, or land revenue in the same amount, and those who were graduates of five years' standing, had been given the right to vote. Adequate provisions were made to protect the interests of the Muslims in the Muslim minority provinces. No such concessions were given to the Hindus. The communalist Muslims eagerly received these political concessions and assured the British of their loyalty and support. According to Ram Gopal, 'the electoral scheme of 1909 showed Muslims that they would get without agitation more than Hindus would get with agitation.' To make the matters worse, when the Congress denounced the Reforms of 1909, the League and its supporters were convinced of the fact that Muslim interests could best be promoted through communal solidarity, and not through collaboration with political agitators.

Weakening of British influence over the Muslim League

In the first few years of its political career, the Muslim League remained completely under the British influence. It worked as a counter-organisation to the Indian National Congress. Its leaders did not hesitate to criticise even the moderate political leaders. The Reforms of 1909, which promised some special concessions to the Muslims, further consolidated the Anglo-Muslim alliance. But two years later a reaction followed. The annulment of the Partition of Bengal in 1911, and the subsequent reunion of the two halves of the province, after a span of six years, greatly antagonised the Indian Muslims. The majority of their leaders regarded it as a great injury to the Muslim cause and they lost their faith in the British friendship.

The happenings outside India proved more unfortunate for Anglo-Muslim relations. The unfriendly attitude of England towards Turkey in the Turko-Italian war (1911) and again in the Balkan war of 1912 could not but injure the religious sentiment of the Muslims. They saw in it 'a concerted' plot on the part of the

Christian Powers to drive Turkey out of Europe and thus put an end to Islam as a temporal power'. The Indian Muslims were so much perturbed by these happenings, writes Pandit Jawaharlal Nehru, "that some of their leaders, with funds collected in India, themselves went to Constantinople and got into close personal touch with the Turkish nationalists."

Hindu-Muslim Unity (1914—1921).

When the Anglo-Muslim relations were greatly estranged, the London Branch of the Muslim League appealed to the Muslims of India to cast in their lot with the Hindus, and to identify themselves with the political objectives of the Indian National Congress. The nationalist Muslim leaders like Maulana Abul Kalam Azad and Maulana Mohammed Ali (who had loudly expressed their sympathies for Turkey) had already exhorted their Muslim friends to throw aside their distrust of the Hindus and the Congress and join them in their struggle against the British. As a result of all this, the League constitution was amended at its Lucknow session of March 1913 and the objective of the League was defined to be the attainment of self-government by constitutional means under the aegis of the British Crown. Thus, the political objective of both the Congress and the League became the same.

This was followed by more cordial relations between the Congress and the League, culminating in the **Lucknow pact of 1916**. Under this agreement (1) the Congress and the League endorsed the principle of separate electorates for the Muslims to be included in the provincial legislative councils. The separate electorates were extended to the Punjab and Central Provinces, where they had not existed till then. (2) The Muslims were assigned more seats than those conceded to them by the Morley-Minto Reforms in the provincial legislative councils. Under the Act of 1909 the Muslims of Bengal and the Punjab were entitled to only 10·7 per cent and 25 per cent of the seats in their respective provincial councils. Their representation under the Lucknow Pact was raised to 40% and 50% respectively. (3) In the other provinces, also, they were given more seats than they had at that time or would have been entitled to on a population basis. In the United Provinces and Madras, for instance, a 14 and 6·15 per cent Muslim population secured a representation of 30 per cent and 15 per cent. (4) One-third of the Indian elected members to the Central Legislative Council were to be Muslims and they were to be elected

through communal voting. (5) In order to safeguard the Muslim interests, it was laid down that no bill or resolution affecting a community should be proceeded with, if $\frac{3}{4}$ of the representatives of that community were opposed to it.

Though the Lucknow Pact conceded far more generous terms to the Muslims in all the Muslim minority provinces, the anti-Congress elements even then did not hesitate to criticise it. It was pointed out by the bureaucracy that a glaring injustice had been done to the Bengali Muslims, for the percentage of seats allotted to them under the Pact was short of the population by 14 per cent. But fortunately for India, such mischiefs could not impair the Hindu-Muslim relations. There remained a complete accord between the League and Congress in the following many years and they successfully carried on the Home Rule agitation. To the Rowlatt Bills of 1919, the Hindus and the Muslims offered a united opposition. They again demonstrated their national solidarity during the Khilafat agitation. So solid and strong was the friendship between the members of two communities that some Hindu religious leaders, who had earlier been denounced as the enemies of Islam, were now invited by the Muslims to preach from the fore-front (*Mambar*) of the Royal mosque of Delhi.*

Back to Differences and Communal riots

The fraternal fervour that drew the Hindus and Muslims together for a time could not last long. The Montford Reforms were followed by such unhappy developments in India as to seriously impair the Hindu-Muslim relations. The first of these developments was the Moplah Rebellion of 1921. The Moplahs were a militant Muslim community (with an admixture of Arab blood), who had settled in Malabar in South India. During the Khilafat movement, the authorities arrested some of their religious leaders. This made the Moplahs furious and they violently attacked the British administration. Unfortunately, this revolt soon took the form of a peasant uprising against Hindu landlords. Fanatically religious, they not only looted their houses and converted them to Islam but also mercilessly put them to sword.

The news of the Moplah Revolt caused a great consternation among the Hindus and there broke out communal riots in various parts of the country. Amritsar, Multan, Moradabad, Meerut, Panipat, Gonda, Jabbalpur, Agra, Rae Bareli, Saharan-

* Aziz K.K. : *The Making of Pakistan*, P. 37.

pur, Delhi, Nagpur, Lucknow, Lahore, Shahjahanpur, Kohat etc. remained for years the storm centres of communal disturbances. The Congress-Khilafat alliance disintegrated and militant Hinduism raised its head. The Hindu Mahasabha, representing extreme Hinduism, held its first significant session at Banaras in August, 1923 and Swami Shraddhanand embarked on the *Shuddhi* or re-conversion movement. The *shuddhi* movement caused great bitterness among the Mussalmans and one of them assassinated Swami Shraddhanand.* The Muslims, on their side, also started *Tabligh* and *Tanzim* movements. This ever-mounting tension brought a great change in the attitude of Maulana Mohammed Ali, the well known leader of the Khilafat agitation. In a thundering speech at Aligarh in 1925, he openly declared : "However pure Mr. Gandhi's character may be, he must appear to me from the point of view of religion inferior to any Mussalman even though he be without character."† Again, at a public meeting in Lucknow, he said, "Yes, according to my religion and creed, I do hold an adulterous and a fallen Mussalman to be better than Mr. Gandhi." Thus, the Hindu-Muslim unity, so assiduously built up by Gandhiji, proved short-lived and was transformed into continuous communal conflicts.

The coincidence of communal riots with political agitation for reforms was not without its significance. It was alleged many a time that the riots were engineered by the police under the inspiration of the British officers. In his evidence before the Joint Select Committee appointed by Parliament to examine the Government of India Reforms Bills, 1919, Mr. M.A. Jinnah openly held that the police instigated the riots. He also said that there had been no Hindu-Muslim riots in the Indian states, because the ruling princes at once removed the police officers from the place when there was any possibility or occurrence of such disturbances. The causes of the riots were, however, quite insignificant. Music before mosques, cow-slaughter, colour throwing at the time of Holi

*Dr. Rajendra Prasad writes in his *India Divided* : "The *Shuddhi* movement of Swami Shraddhanand has come in for a great deal of criticism both from the nationalists and the Mussalmans..... it is difficult to understand how Christians and Mussalmans can object to it on merits. They are constantly engaged in their proselytising mission and converting Hindus to their own faiths it is no business of non-Hindus, especially, if they are themselves engaged in the work of conversion, to object. The Hindus must have the same right of propagating their faith as others have."

†*The times of India*, March 21, 1925.

often led to riots. According to Dr. Ishwari Prasad, Gandhiji's temperamental disability to keep pure politics separate from religion was another cause of these painful happenings.

Whatever the basic reasons of these communal disturbances, they struck a heavy blow at national unity. Even Muslim leaders of the eminence of Dr. Kitchlew said that the Lucknow Pact, reputed as a charter of Hindu-Muslim unity, should be burnt. "Had not the Hindu and Muslim leaders embarked on a programme of conversion and consolidation of their respective communities," writes, Ram Gopal, "Hindu-Muslim relations would not have been impaired to the extent they were in spite of communal disturbances. The movements like the *shuddhi*, the *Sangathan*, the *Tabligh* and the *Tanzim* all added fuel to the fire.

Revitalisation of Muslim League

During the years of Khilafat movement the leadership of the Indian Muslims had fallen into the hands of the Khilafat Committee and the All India Jamiat-ul-Ulema. The Muslim League had ceased to exist for all practical purposes. In 1922, it seemed as if the very life was ebbing out of it; there was no annual session that year. The attendance at the annual session of 1923 was so poor that the open session had to be abandoned. But the communal riots that vitiated the Indian atmosphere for a number of years gave it a new lease of life. Taking advantage of the unhappy situation created by the communal disturbances, the League leaders started their efforts to revitalise their organisation. They began to claim that eventually it was the League that would direct the course of Muslim politics. They also made blatant communal speeches, which caused no small amount of excitement in the country. In his presidential speech at the session of the Muslim League (1925), Sir Abdur Rahim said, "League was now more necessary to Muslims than ever because of Hindu attacks on their community. Hindus had by their provocative and aggressive conduct made it clearer than ever that Muslims could not entrust their future to them and must adopt every possible measure of self-defence. The League leaders also expressed their dissatisfaction with the Lucknow Pact and asked for the rectification of the 'injustice' that had been done to the Muslims of the Punjab and Bengal under it.* Even Mr. M.A. Jinnah, who had not yet accept-

*The under representation of the Muslims of Bengal and Panjab under the Lucknow Pact was condemned on the ground that there were educationally more backward than their co-religionists elsewhere.

ed the communal politics, held that events had outpaced the Pact, and that it must be revised. Another demand put forth by the League leaders was that a legislature be constituted in the North-West Frontier Province, which was a Muslim-majority province. They also asked for the separation of Sindh from Bombay, as it would give the Muslims another majority province. In their zeal to swell their numbers, the Muslim missionaries started a conversion campaign among the lower classes of the Hindus, commonly known as 'untouchables.'

Struggle within the League

When the League leaders were busy in extending the influence and organisation of the Muslim League among the masses, the Conservative Government in England announced the appointment of an All-British Commission headed by Sir John Simon) to study the working of the Indian Constitution. The exclusion of the Indians from this royal Commission instantly roused national indignation. The Congress called upon the people to boycott it in every form and at all stages. The League leaders, unfortunately, could not arrive at a unanimous decision. The progressive section of the League headed by Mr. Jinnah fell in line with the Congress programme of boycott and demonstration. The others led by Sir Mohammed Shafi (A Muslim leader of the Punjab) offered to accord active co-operation to the Commission. As a result of this struggle within the League, two sessions of the party were held that year—one at Lahore and the other at Calcutta. The Calcutta session, of which Jinnah was the President, emphatically declared that Simon Commission was unacceptable to the Indians and the Muslims had nothing to do with it. The Lahore Session, on the contrary, appealed to the Muslims to co-operate with the Commission, as it was in the best interests of their community.

The rift in the League ranks considerably widened in the subsequent years. The 'Shafi League' and the 'Jinnah League' adopted different attitudes on political questions. For instance, the former did not participate in the All Parties Conference, while Mr. Jinnah took an active part both in the conference and in the framing of the Nehru Report or Nehru Constitution. The attitude of the 'Shafi League' towards the Nehru Report was not at all favourable. It not only rejected this Constitution but also criticised its various provisions. Besides, the All Parties Muslim Conference at Delhi made it clear that the Muslims would not

accept any constitution in which the rights and interests of their community were not adequately safeguarded. Jinnah was now extremely disappointed and he left for England; perhaps, with the idea of starting his legal practice there.

Jinnah's acceptance of communal politics and Fourteen Points

On his return from England in October, 1928, Jinnah attended the National Convention at Calcutta and put forth three main suggestions viz. (1) Muslims should be given $\frac{1}{3}$ representation on the Central Legislature; (2) the Punjab and Bengal should have Muslim representation on the population basis for ten years; (3) the residuary powers should be vested in the Provincial Legislatures and not in the Centre. Mr. Jinnah then pressed these suggestions in the form of amendments to the Nehru Report, but they were rejected in the Sub-Committee of the National Convention. At this, the League leader felt mortified and left the Convention in disgust and disappointment. The subsequent resolution of the Congress, which advocated the acceptance of Nehru Report by the Government in its entirety, infuriated him. According to Dr. Ishwari Prasad, he looked upon this resolution as an insult to the Muslim community and an index that no justice could be expected from the Gandhi-dominated Congress.*

In utter disgust, Jinnah thought it advisable to give up his progressive views and accept communal politics. Ere long he managed to summon a meeting of the All India Muslim League at Delhi, where a union was effected between Jinnah League and Shafi League on the basis of Fourteen Points, which were to be put forward as the minimum Muslim demands, and as a prerequisite of any political agreement. These Fourteen Points were :—

(1) The form of the future constitution should be federal with residuary powers vested in the provinces. (2) A uniform measure of autonomy should be granted to all provinces. (3) All legislatures in the country and other elected bodies should be reconstituted on the definite principle of adequate and effective representation of minorities in every province without reducing the majority of any province to a minority or even equality. (4) In the central legislature, Muslim representation should not be less than one-third. (5) The representation of communal groups should continue to be by means of separate electorates as at present,

* Prasad Dr. I. : *History of Modern India* P. 423.

provided that it should be open to any community at any time to abandon its separate electorates in favour of joint electorates. (6) Any territorial redistribution that might at any time be necessary should not in any way affect the Muslim majority in the Punjab, Bengal and North-West Frontier Province. (7) Full religious liberty, that is, liberty of belief, worship, observances, propaganda, association and education should be guaranteed to all communities. (8) No bill or resolution, or any part thereof, should be passed in any legislature or any other elected body, if three-fourths of the members of any community in that particular body oppose such a bill or resolution or part thereof on the ground that it would be injurious to the interests of that community or, in the alternative, such other method as may be devised or may be found feasible and practicable to deal with such cases. (9) Sindh should be separated from the Bombay Presidency. (10) Reforms should be introduced in the North-West Frontier Province and Baluchistan on the same footing as in other provinces. (11) Provision should be made in the constitution, giving the Muslims an adequate share along with other Indians in all services of the state and in all self-governing bodies, having due regard to the requirements of efficiency. (12) The constitution should embody adequate safeguards for the protection of Muslim religion, culture and personal law, and the promotion of Muslim education, language, religion, Muslim charitable institutions and for their due share in grants-in-aid given by the state and self-governing bodies. (13) No cabinet, either central or provincial, should be formed without there being a proportion of at least one-third Muslim ministers. (14) No change to be made in the constitution by the central legislature except with the concurrence of the states constituting the Indian federation.

A comparative study of these 'Fourteen Points' with Jinnah's 'Three Amendments' at the Calcutta National Convention clearly reveals the ever-shifting and ever-increasing demands of the Muslim League. This tendency of its leaders was mainly responsible for the failure of the numerous attempts that were subsequently made to arrive at a communal settlement.

Congress-League alliance on constitutional questions

Despite the divergence created by the Nehru Report of 1928, the Congress and the League, however, presented an alliance on constitutional questions till 1937. The Communal Award of 1932

was accepted for the time being by both the parties. Mr. Jinnah was supported by the Congress members in the Central Assembly in 1935 in condemning the federal part of the new constitution as 'fundamentally bad and totally unacceptable'. In 1935 and, again in 1936, this alliance brought about the rejection of the budget and forced the Governor-General to 'certify' it. Never before, writes S.R. Sharma, had 'the nationalist opposition pressed the Government so hard as it did in this brief period of Hindu-Muslim co-operation. Even during the election campaign of 1937, the League and the Congress at places worked in a spirit of mutual co-operation. The Congress leaders of the United Provinces, who were not sure of a decisive victory, made an alliance with the Leaguers and promised to offer them (Leaguers) some ministerial posts in the coalition government in return for their help in the elections.

Congress Ministries and rift in the lute

The elections of 1937, however, proved most unfortunate for the Congress-League relations. Of the eleven provinces in British India, the Congress won absolute majority in five and was the largest single party in three others. The experience of the Muslim League, on the other hand, had been curiously different. It secured only 4·8 per cent of the Muslim votes and failed to win majority of seats even in any of the four Muslim majority provinces. Probably, its greatest strength was in the United Provinces. But there, too, the League had to face disappointment after the elections.

When the Congress decided to accept office and proceeded with its ministry-making efforts, the League in U.P. put forward its claim for a share on the strength of its pre-election understanding. During the negotiations that ensued between the Congress and the League, the latter demanded two seats for its members. The Congress party, which had already one Muslim in the person of R.A. Kidwai offered only one seat to the provincial League leaders. They were also plainly told that if any of them were to find place in the provincial ministry, then the Muslim League party in the Assembly must 'cease to function as a separate group' and its members must submit themselves to the Congress party discipline. Though constitutionally there was nothing wrong with the conditions laid down by the Congress, yet it definitely aggravated the sense of grievance, frustration and isolation amongst the League's.

Mr. M.A. Jinnah cleverly interpreted it as an attempt by the 'Hindu Congress' to suborn Muslims from their League loyalties with the bait of office. He also characterised it as death-warrant for the Muslim League. He, thereupon, became an uncompromising foe of the Congress and embarked on a bitter campaign of vilification.* Maulana Azad holds that he (Azad) was in favour of conceding the demand of the Muslim League in U.P. even if the strength of the ministry had to be raised to 9 in order to accommodate three Muslim ministers. But Pandit Nehru was not prepared to allot more than one seat to the League. In view of the fact that these terms were offered to the U.P. League by Azad himself, his effort to shift the blame on Pt. Nehru seems hardly appreciable.

After the Congress had failed to reach an amicable settlement with the League in U.P., it (Congress) planned to launch a 'mass contact' movement among the people living in the countryside. This made the situation more serious, because the Muslim League took it as another affront and challenge to its very existence. Hence, before the mass-movement of the Congress had made much headway, the League itself turned towards the masses. It reduced the annual membership fee to two annas and began to extend its organisation. The League also started unscrupulous propaganda to rouse Muslims of all classes to the danger of Hindu domination. According to Penderal Moon, "As a result of these developments Congress rather than the British now became Jinnah's enemy number one, and he himself embarked upon a country-wide tour to rally the hitherto ignored Muslim peasants and artisans." 'Islam is in danger', he cried, and Muslims began to respond. Michael Brecher writes that "the opening shots had (thus) been fired in the calamitous Congress-League war, which was to envelop north India in flames and ultimately result in partition".†

Atrocity stories against Congress Governments

As soon as the Congress ministries started functioning, Jinnah became more vehement in his denunciation. He repeatedly said that Muslims could expect neither justice nor fair play under the Congress Governments and all hope of communal peace had been

*"The Congress rejection of the idea of co-operative living with the Muslim league," was a fatal mistake which wrecked all chances of a united India. Aziz K.K. : *The making of Pakistan* P. 52.

† Michael Brecher : *Nehru : A Political Biography* P. 231.

wrecked on the rock of Congress fascism. The League leaders refused to recognise *Bande Matram* as the national anthem and expressed resentment against its singing in the legislative assemblies and at public meetings. Many a time the League representatives in the assemblies actually staged a 'walk out' as a protest against the singing of *Bande Matram*. To make matters worse, reports were issued regarding the ill-treatment alleged to be meted out to the Muslims in various Congress Government provinces. In these reports mountains were made out of mole-hills and trivial communal incidents of every-day occurrence were painted in lurid colour so as to inflame popular feeling.

The first of such reports was *Pirpur Report*, which charged the Congress Governments with (i) discrimination against the Muslims in the services, (ii) partiality to Hindus during communal riots, (iii) inadequate subsidies to Muslim schools, (iv) official support to the propagation of Hindi, (v) an onslaught on Muslim culture. The overall conclusion of the Report was that the Muslim community was much better off under the British than under Congress rule. Though there was little truth in these allegations, yet the *Pirpur Report* added fuel to the flames. Mr. M.A. Jinnah and the Bengal Premier Fazal-ul-Huq also levelled charges against the Congress. Their charges were more dangerous and serious in nature. In one of his speeches, Mr. Fazal-ul-Huq said, "In Congress Provinces, riots have laid the country-side waste. Muslim life, limb and property have been lost, and blood has freely flowed... The mosques are being defiled and culprits never found nor is the Muslim worshipper unmolested. The Muslim officers have been unjustly treated or deprived of their legitimate rights."

When the Congress leaders challenged the League's allegations and asked for an impartial inquiry into them, Mr. Jinnah replied in evasive and offensive language. Rather, he refused to accept the challenge. Had there been an iota of truth in these allegations, the British authorities must have exposed the Congress Governments. The address of Sir Harry Haig, the Governor of U.P. on the record of Congress ministries is of special significance. He said, "In dealing with questions raising communal issues, the Ministers, in my judgement, normally acted with impartiality and a desire to do what was fair. The Congress administration on its

constructive side has been inspired by enthusiasm, imagination and a considerable degree of idealism.”* Maulana Azad, a profound theologian, who had also an intimate knowledge of the working of the ministries, dismissed the ‘atrocities’ stories as mere canards and imprudent lies. He wrote, “From personal knowledge and with a full sense of responsibility, I can, therefore, say that the charges levelled by Jinnah and Muslim League with regard to injustice to Muslims and other minorities were absolutely false. If there had been an iota of truth in any of these charges, I would have seen to it that the injustice was rectified. I was even prepared to resign, if necessary, on an issue like this.”†

Despite all this, the Leaguers did not give up their policy of vilification. In March 1939, the Bihar Muslim League published a report known as the *Shareef Report* (after the name of its draftsman), which was also full of allegations against the provincial Congress Government. Another indictment of the Congress rule was made by Fazal-ul-Huq in December 1939 in a statement issued to the press and later re-published in a pamphlet form under the title *Muslim Sufferings under the Congress Rule*. As a result of this communal propaganda of the Muslim League, the Hindu-Muslim relations became more tense and Jinnah was acknowledged the greatest leader of the Muslims in India.

Resignation of Congress Ministries and ‘Day of Deliverance’

On the outbreak of the Second World War, the Congress ministries as a protest against the Viceroy’s proclamation suddenly resigned. This withdrawal of the Congress was a tactical error for it left the field free for Jinnah. The League leader soon swooped on his opportunity and called upon Muslims and all those, who were opposed to the Congress rule, to celebrate the departure of the Congress Governments as a ‘Day of Deliverance’. Gandhiji appealed to Jinnah to call off the ‘Day of Deliverance’ but to no avail. The followers of League celebrated the 22nd of December 1939 as ‘Day of Deliverance.’ On this day Jinnah is said to have remarked : “Democracy can only mean Hindu Raj all over India”. He repeated approvingly Lord Morley’s dictum that ‘the fur coat of Canada will not do for the extremely tropical climate of India.’ All this naturally further worsened the Congress-League relations.

*Quoted by V.B. Kulkarni : *British Dominion in India and After* P. 195

† Maulana Azad ; *India Wins Freedom* P. 22.

In January, 1940, Gandhiji made another attempt to secure Jinnah's co-operation in 'building up the Indian nation'; but the latter's reply was a sneer. This change in Jinnah's attitude is difficult to explain, but one thing is certain that the Governor-General now sought to weaken the Congress and to strengthen the League. Mr. V. P. Menon writes : "When Congress resigned provincial office, Lord Linlithgow's attitude automatically changed. He began to lean more on the support of the Muslim League. For all practical purposes Jinnah was given a veto on further constitutional progress.... The Viceroy even discouraged the efforts of certain well wishers to bridge the gulf between the Congress and the Government."*

According to Penderal Moon the outbreak of war afforded a splendid opportunity of repairing the damage that had been done to Hindu-Muslim relations. On the plea of a national emergency Congress men could have retraced their steps and sought to join with the League in coalition both in the Provinces and at the Centre... But Congress resigned office in all the provinces in which it held... This was perhaps the most foolish step Congress ever took." As a result of it, Jinnah was raised to an eminence, which he had never enjoyed before. In this context Prof. Thompson writes : "The Muslim League gained in the same fashion as Congress, since it became the Government practice to treat its President, Mr. Jinnah, as a kind of Moslem Gandhi."†

III—PAKISTAN MOVEMENT

The resignation of the Congress ministries in September 1939, was followed by a rapid and revolutionary change in the Muslim League's outlook. Its Working Committee did not take long to declare that Muslim India was 'irrevocably opposed' to any federal objective. In March, 1940, in a session at Lahore, it passed what is known as the 'Pakistan Resolution' demanding in plain terms the partition of India and the grouping of regions in which Muslims were numerically in a majority (as in the north-western and north-eastern zones) into an "independent state". But, despite all this, writes Penderal Moon, "Jinnah was not really irrevocably committed to Pakistan Resolution. Privately, he told one or two people in Lahore that this Resolution was a 'tactical move'... designed to wring from the Congress concessions

**The Transfer of Power in India*, PP. 69-72.

†*Edward Thompson : Enlist India for Freedom* P. 23.

which would make partnership more tolerable... He was (also) never keen to expound the exact nature of Pakistan, and right up till 1947 there was some doubt as to what he would accept as conforming sufficiently to his conceptions.”*

Genesis of Pakistan

The idea of Pakistan, which was put forward by Jinnah in the Lahore Resolution, was not a new one. It had first been mooted by Sir Muhammad Iqbal (the well known urdu poet of the Punjab) in December 1930, at the annual session of the League held at Allahabad. In his presidential address to the Muslim League Dr. Iqbal had then said, “I would like to see the Punjab, North-west Frontier Province, Sind and Baluchistan amalgamated into a single state. Self-Government within the British Empire, or without the British Empire, the formation of a consolidated North-West Indian Muslim state appears to me to be the final destiny of the Muslims at least of North-Western India”.†

This idea of Iqbal did not attract a serious attention of the Muslims in India, but it began to gain force among the Muslim students, studying in London. In the early thirties a Muslim student of the Cambridge University, Choudhary Rahmat Ali, prepared a plan for the formation of an independent Muslim state, consisting of the provinces of the Panjab, the Afghan Province (N.W.F. Province), Kashmir, Sind and Baluchistan. He gave this Muslim state the name of ‘Pakistan’ (It literally means the land of the pious). The word ‘Pakistan’ was formed by joining the first letters of the first four component units with ‘TAN’ of Baluchistan. Thus, it was Rahmet Ali, and not Dr. Iqbal, who should be called the originator of the idea of Pakistan.‡

During the Third Round Conference, Choudhary Rahmat Ali circulated his scheme through a very small leaflet entitled ‘Now or Never’ and made it familiar to the delegates in London. The reaction of the Muslim delegates to this scheme was, however, amusing. When asked about this scheme by the British delegates, Sir Zaffar Ullah Khan characterised it as ‘chimerical and impractic-

* *Penderal Moon ; Divide and Quit*, P. 21

† But be it noted that Dr. Iqbal did not dream of a separate homeland for the Muslims.

‡ Some modern critics like K. K. Aziz are reluctant to accept Dr. Iqbal as the originator of the idea of Pakistan. According to them Dr. Iqbal did not argue for ■ Muslim state, but only for ■ Muslim bloc in an Indian federation. Moreover, Bengal and Assam (the present East Pakistan) did not enter into his calculation.

able'. Another Muslim delegate, Mr. Yusaf Ali called it ■ 'students' scheme'.

In spite of the discouraging attitude of their leaders, the Muslim students of the Cambridge University did not give up the idea of Pakistan and continued their propaganda in its favour. In July 1935, Rahmat Ali proclaimed himself the founder of the 'Pakistan National Movement' and circulated another four-page leaflet. In this new leaflet he not only reiterated his demand of Pakistan but also argued that 'while Burma is being separated from Hindustan, it remains a mystery to us why Pakistan..... is to be forced into Indian federation.' To the good fortune of Rahmat Ali's plan, the elections of 1937 were followed by such sudden and significant developments that all, which was declared 'chimerical and impracticable' or 'students' scheme', became the goal of Muslim League in 1940.

The Pakistan Resolution (1940)

Soon after the outbreak of the second world war, the Congress ministries in the Provinces resigned. This greatly strengthened the position of the Muslim League and Mr. Jinnah. In its annual session at Lahore in March 1940, the Muslim League, under Mr. Jinnah's inspiration, passed the famous 'Pakistan Revolution'. Presiding over this historic session of the League, Mr. Jinnah repeated his newly discovered doctrine that Hindus and Muslims constituted two separate nations and therefore India should be divided to contain separate homeland for each. He also declared that 'no power on earth can prevent Pakistan.' The 'Pakistan Resolution' was, indeed, surprising in the sense that the Muslim League, which had not even mentioned the name of Pakistan in its 'Election Manifesto' of 1937, had now made it its political objective.

Though this Resolution was vague at many a point, yet the demand of a separate homeland (as put forward by it) was quite clear. The Punjab Premier, Sir Sikandar Hyat Khan, was gravely embarrassed by this Resolution. He publicly stated that, if Pakistan movement meant a Muslim *Raj* here and ■ Hindu *Raj* elsewhere, he would have nothing to do with it. Mahatma Gandhi in September issue of the *Harijan* wrote ; "The partition proposal has altered the face of the Hindu-Muslim problem. The cuttings of (Newspapers) show that the Hindus and Muslims are already at war with one another and they must prepare for final tussle."*

*Gandhi M.K. : *The Harijan* September, 1940.

The Lahore Resolution was followed by a vigorous propaganda in favour of Pakistan. The Muslims all over the country were told that Pakistan would be a prosperous Muslim state, where Muslims would be supreme in every respect. The ambitious politicians, civil servants as also some professional men began to perceive that, with the elimination of Hindu competition, they could rise to position of power and affluence unattainable in a single, mixed Hindu-Muslim state. The illiterate Muslims were allured by the prospect of looting their Hindu neighbours.

Mountbatten Plan and emergence of Pakistan

The Pakistan Resolution of 1940 put the Congress in an embarrassing situation. It was already in the thick of its fight for freedom. To it was now added the task of maintaining the integrity of India, which was seriously threatened by the League's demand of partition. All this constituted a formidable problem and precisely for five main reasons : First, the attitude of the British authorities had changed in League's favour. Secondly, Jinnah's position had been enormously strengthened and he was determined to take advantage of the new situation. Thirdly, the British could not be forced to quit India unless there was an agreement between the League and the Congress on constitutional problem. Fourthly, the imperialist Prime Minister Churchill was unwilling to transfer power to the hands of the Indians. Fifthly, nothing was certain about the consequences of the war, which was still in progress.

The situation became more complicated in the following years. The British Government, in its effort to prolong its hold over India, began to take sides with the League and against the Congress. In its Declaration of August, 1940, it held out an assurance to the Indian Muslims that the British Government would not sanction ■ constitutional settlement of India to which they (the Muslims) were firmly opposed. It not only increased the communal tension but also placed a veto in the hands of the Muslim League. The Cripps proposals, which came next as a solution of the Indian problem proved more unfortunate. Through them the British Government admitted for the first time the possibility of partition. According to Penderel Moon : "This was ■ triumph for Jinnah. It put him in ■ very strong position for, if the Muslims of the Muslim majority provinces stood behind him, he could now, with the rights to stay out conceded, bargain for the terms on which those provinces would come in, and the dream of the Congress *Raj*

over the whole of India would never come true.”*

Thereafter, Mr. Jinnah adopted an uncompromising attitude both towards the Government and the Congress. He refused to accept any settlement that would not provide for the Pakistan of his own conception. The efforts of Feroze Khan Noon, Sapru Committee, Lord Wavell and others to find out a solution of the political problem did not bear any fruit. Rather, the situation went from bad to worse. Shri Rajagopalachari, then, submitted to the All India Congress Committee a resolution recommending acquiescence in principle of Pakistan but he was heavily defeated. This not only irritated Mr. Jinnah but also made him fanatic for the achievement of Pakistan. The ‘Quit India’ movement gave him a golden opportunity to strengthen his position among the Indian Muslims. When the Congressmen were in jails, he carried on his campaign among his co-religionists without any challenge or opposition. Thus, within a period of only four years (1942-46), Jinnah became so ambitious and powerful that even the British authorities could not claim to have any influence on him. Much against the wishes of the Governor-General, he withdrew his acceptance of the Cabinet Mission Plan and threatened with ‘Direct Action’. This led to communal riots and disturbances. The obstructive attitude of the Leaguers in the Interim Government made confusion more confounded. Both the British and the Indian politicians then realised that partition was inevitable. Lord Mountbatten, the Viceroy of India, soon held discussions with the Indian leaders and then prepared his scheme for division. After it had been accepted by the League and the Congress, the British Government took immediate steps to accomplish the work of partition. Thus, Pakistan, as a separate state, comprising some parts of the Indian sub-continent, came into existence on August 14, 1947.

IV—PARTITION OF INDIA

(Was it inevitable ?)

The partition of India was certainly in doubt even as late as the middle of 1946. But, within the span of a single year, it became an established fact of history. Powerful critics in 1947 and since have pronounced various judgements on this subject. Some of them including Maulana Azad are of the opinion that partition of India was never inescapable ; that it was the conscious choice of the nationalist leaders, notably Nehru and Patel. There are others, who assert that, as a consequence of various developments between

*Moon Penderal : *Divide and Quit*. P. 27.

July 1946 and March 1947, the partition of India became unavoidable, leaving no other solution of the Indian problem. As a matter of fact, up till 1937 the partition of India was quite easily avoidable. Pakistan had not yet become a live political issue nor had the League and Mr. Jinnah suggested the division of the country as an appropriate or possible solution of the Hindu-Muslim problem. But a general lack of wisdom and statesmanship in the years 1937-42, writes Penderal Moon, made the partition unavoidable. Even the Viceroy of the brilliance and personal magnetism of Lord Mountbatten, who arrived in Delhi in March 1947, found no other solution of the problem except partition.

The critics, who opine that the partition was the voluntary choice of Nehru and Patel, contend that it was these two Congress leaders (particularly Patel) who first fell for Mountbatten's idea of partition and then carried the party in favour of the division of India. Even a day before the Congress acceptance of Mountbatten Plan, writes Maulana Azad, Gandhiji was firmly opposed to the idea of partition. He is said to have remarked : "If the Congress wishes to accept partition, it will be over my dead body. So long as I am alive, I will never agree to the partition of India. Nor will I, if I can help it, allow Congress to accept it." But Patel and Nehru, the two senior lieutenants of Gandhiji, somehow or other, managed to secure his acquiescence. After Gandhiji had agreed to the partition plan, they had no difficulty in having their way in the A.I. C.C., session held on July 14, 1947. Anyhow, If Patel and Nehru were responsible for the Congress acceptance of partition, what, then, were the reasons that impelled them to accept a proposition to which they had hitherto been opposed ? A careful analysis of the circumstances under which Mountbatten Plan was accepted reveals that Nehru and Patel were more conversant with the arguments against the acceptance of partition than their critics. But, to their utter dismay and disgust, the turn of events had rendered the partition inevitable. They looked upon it as the lesser of the two evils with which the country was then threatened. The main factors and forces which impressed upon them the inevitableness of partition and shaped their outlook on this question may be analysed as under :—

(a) *Jinnah's intransigence and bellicosity.*

The national leaders believed that the Indians' chief struggle was against the British rule, and the League's communalism was merely a hinderance to the marshalling of complete national

support in an 'anti-imperial' front. So they earnestly desired to effect an amicable settlement with the Muslim League. With this end in view, the Congress leaders made some attempts in this direction but in vain. Rather, every effort of theirs made Jinnah more ambitious and uncompromising. The ever-shifting ground of his demands from three amendments to 'Fourteen Points' and then to Pakistan clearly reveals Mr. Jinnah's tendency to exploit the Congress anxiety for communal settlement. Worse still, in the forties of the present century, Jinnah became adamant and bellicose. He refused to pay heed to the nationalists' appeals for co-operation and was unwilling to accept any settlement, which did not offer him the Pakistan of his own conception. The failure of the Rajgopalachari Formula, Wavell Plan, and even Cabinet Mission Plan was primarily due to his intransigence. On the eve of partition, Mr. Jinnah became so immoderate in his demands that he pressed the Congress to accept League as the authoritative representative of all Indian Muslims. This was, indeed, too big a claim to be accepted by the Congress, which had always claimed to be a national organisation. His vanity and ambition exceeded all reasonable limits. The formation of Interim Government without him exasperated him. He talked of the British treachery and British-Congress collusion against the Muslims. He fretted and fumed to pull down the heavens. He also bade good-bye to the constitutional methods and had a resort to 'Direct Action.' The League politics thus descended to the lowest level of hooliganism. The differences between League and Congressmen reached their climax. They left neither any scope for peaceful settlement nor was there any hope of change in Jinnah's attitude. Worse still, there was no dependable third party to mediate. Under these circumstances, the Congress leaders had no solution but to accept Jinnah's demand, because any other alternative could be more dangerous and disadvantageous.

(b) Communal riots and disorder

The 'Direct Action' decision of the League in July, 1946 was very ominous. It set into motion the destructive forces, which engulfed the country in no time. The communal passions rose high and showed the signs of strain and strife. The observance of the 'Direct Action Day' on 16th August led to the 'Great Killing of Calcutta', which sent a wave of horror throughout the country. The Calcutta riots were followed by the risings in

Noakhali and Tipperah, where Muslims fell upon the Hindus and butchered them mercilessly. The Hindus in several districts of Bihar rose to avenge the wrongs of Noakhali and killed several thousand Muslims. The disturbances spread in other parts of the country and saw their climax in the Punjab. Thus, for a year the murders and retaliation continued to disfigure India's political life and there prevailed all confusion and chaos in the country. The appeals of the Indian leaders for communal harmony had no effect on the masses, who had gone practically mad. This fast spreading civil war and consequent disorder could not but influence the Congress leaders, who inferred that "partition was better than the murder of the innocent citizens."

(c) *Failure of Interim Government*

The Interim Government was reconstituted on 15th October 1946, with the inclusion of five League nominees. Immediately after it, it became another battle-front between the League and the Congress. The League nominees, who had joined the Government to obstruct its successful working, became a source of trouble for their colleagues. The difficulties, in the main, were created by Liaquat Ali, who was in charge of the Finance and thus held the key to administration. With the help of some very able senior Muslim officers of his department, he succeeded in following the policy of obstruction. He rejected or delayed any proposal put up by the Congress Members of the Executive Council. The Congress Members soon discovered that they could not create the post of even a *Chaprasai* without Liaquat Ali's concurrence. They resented their helplessness before Liaquat Ali but in vain. The daily conflicts within the Cabinet made its smooth working difficult. The Government was paralysed and the Congress Members were convinced that they could not work with the Muslim League. Patel is said to have openly remarked, writes Maulana Azad, "he was prepared to let the League have a part of India, if only he could get rid of it." Evidently, the failure of the Interim Government was also a cogent factor, which drove the Congress leaders in favour of partition.

(d) *British attitude on transfer of power*

The British threat of leaving the country by June 1948, whether in peace or in chaos, left no alternative to division except civil war. The former was definitely the lesser of the two evils. A tragic civil war, as Nehru observed some time later, would have ravaged the sub-continent and checked the progress of India for

a long time to come. Moreover, the prospect of an imminent acquisition of power in a divided but independent India was more tempting than a civil war, which threatened with grave consequences. It was also feared, writes Michael Brecher, that on the Congress rejection of Mountbatten Plan the British Government would impose an award, which would be even more disadvantageous. Thus, the British threat to transfer power and the fear of British response to Congress intransigence also helped to condition their acceptance of partition. Pt. Nehru himself reflected in summer of 1956 : 'The partition of India became inevitable. I think now, looking back, that partition could have been avoided, if the British Government's policy had been different.'

(e) *Enforced unity neither desirable nor advisable*

In view of the fact that a section of the Muslims was firmly determined to secede from India, it was at last thought neither desirable nor advisable to force them to stay in the Union. First, a Union achieved by compulsion would not last long. Secondly, it was against the democratic procedure. Thirdly, the presence of these people in the Union did not promise to be useful in terms of India's long-run interests. Nehru told his colleagues frankly : "If they (the Leaguers) are forced to stay in India, no progress and planning will be possible." The same view was expressed by Patel in a bit different way at A.I. C.C. Session held on June 15, 1947 : "If one limb is poisoned, it must be removed quickly lest the entire organism suffer irreparably." Besides, Lord Mountbatten's arguments in favour of building a strong and consolidated India without League must also have shaped the outlook of the Congress leaders on partition. Nine years after the partition, Nehru remarked : "A feeling that even if we got freedom for India with that background, it would be a very weak India, that is, a federal India, with far too much power in the federating units. A larger India would have constant troubles, constant disintegrating pulls..So we accepted and said, 'let us build up a strong India.' And if others do not want to be in it, well, how can we and why should we force them to be in it ?"

(f) *Doubts about Pakistan's viability*

In the atmosphere of tension, of fear and hope, which prevailed in India throughout 1947, there was a widespread belief that partition would be short-lived. Most of the Congress leaders also subscribed to the view that Pakistan was not a viable state (politically, economically, geographically and militarily) and that sooner or later the areas, which had seceded, would be

compelled by circumstances to return to the fold. The hope of reuniting India was also expressed by Kirpalani just after the Congress had accepted the Mountbatten Plan. He declared: "A strong, happy democratic India can win back the seceding children to its lap...for the freedom we have achieved cannot be complete without the unity of India." It is quite probable that the doubts about Pakistan's viability might have induced the nationalists to accept partition as a temporary solution of the Indian problem.

(g) Influence of Lord Mountbatten

Lord Mountbatten, the last British Governor-General of British India and the first of free India, was no mean a factor, which shaped the outlook of Congress leaders on partition. By his skillful arguments, pleasing manners and powerful personality, he succeeded in convincing Sardar Patel of the desirability of accepting partition. Thereafter, he directed his efforts towards Nehru, whose opposition to the idea of partition was also gradually worn down. To quote Maulana Azad, "Within a month of Lord Mountbatten's arrival in India Jawaharlal, the firmer opponent of partition, had become, if not a supporter, at least acquiescent towards the idea". In this difficult task, it is asserted, Lord Mountbatten was greatly assisted by his noble wife, who impressed Nehru more than her husband did.

(h) The weak position of the Nationalist Muslims

In spite of the growing popularity of the Muslim League and its communal propaganda, some eminent Muslim leaders, like Hakim Ajmal Khan, Badr-ud-din Tyabji, Dr. Kitchloo, Maulana Azad, Dr. Ansari and Dr. Zakir Hussain kept up their affiliations with the Congress. They continued to serve this national body with unflinching fidelity and devotion. But, due to the communal politics of the League and the anti-Congress tactics of the Government, they failed to maintain their hold on the Muslim masses. The Government, by refusing to recognise them as the real representatives of the Muslim community, gave a severe blow to their position. To make matters worse, when the Congress in the early forties started negotiations with the Muslim League for communal settlement, it also tacitly recognised the League as representative of the Indian Muslims. This further weakened the position of the nationalist Muslims. Many of them then joined the League. Those, who remained in the Congress fold, were now too weak to start a successful movement to counter-act the League's communal politics. Had these nationalist Muslims been

in a stronger position, the demand of Pakistan could be nipped in the bud and partition of India avoided.

(i) *Other influences and considerations*

Besides the above-mentioned factors, some other influences and considerations also induced the Congress leaders to accept partition. It is said that they were besieged by the urgent pleas from Hindus and Sikhs in the Punjab and Bengal to accept partition of these Provinces in order to safeguard them against permanent discrimination. The thought that delay in accepting the British offer might jeopardise the Indian freedom also weighed heavily with them. Lastly, under the circumstances, the Mountbatten Plan seemed to be honourable and more effective. Nehru himself remarked : "We saw no other way of getting our freedom... in the near future I mean." According to Michael Brecher "the price of power was also a great temptation for the Congress leaders, who had already tasted its fruit and were naturally reluctant to part with it at the moment of triumph."

FURTHER READING

1. *Ram Gopal* : Indian Muslims (A Political History)
2. *Michael Brecher* : Nehru : A Political Biography
3. *Frank Moraes* : Jawaharlal Nehru
4. *Penderal Moon* : Divide and Quit
5. *V. B. Kulkarni* : British Dominion in India and After
6. *Maulana Azad* : India Wins Freedom
7. *Rajendra Prasad* : India Divided
8. *Nehru* : The Discovery of India
9. *Ramsay MacDonald* : The Awakening in India
10. *Maurice Gwyer and Appadorai* : Speeches and Documents on the Indian Constitution
11. *Chaudhry Khaliquzzaman* : Pathway to Pakistan
12. *Sri Parkasa* : Pakistan : Birth and Early Years
13. *K. K. Aziz* : The Making of Pakistan
14. *Satya M. Rai* : Partition of the Punjab
15. *D. H. Qureshi* : Muslim Community of the Indo-Pakistan subcontinent
16. *Ikram and Spear* : Cultural Heritage of Pakistan
17. *A. H. Alberuni* : Makers of Pakistan
18. *R. A. Symonds* : The Making of Pakistan

PART II
INDIAN NATIONAL MOVEMENT

Read by
Mrs. S. S. S. S.
14th semester

CHAPTER 14

Indian National Movement

The rise and growth of the Indian national movement is both a fascinating and significant aspect of modern Indian history. Though vast in scope and diverse in its nature, this movement was led and manned primarily by the Indian National Congress.* Besides, it had to pass through various phases before it reached its consummation in the liberation of our country. Among the eminent nationalists, who guided its course, the role of Gandhiji was of singular importance. "But for his timely and enlightened leadership," writes Frank Moraes, "the national movement might not have progressed and fulfilled itself the way it has done."†

SECTION I

BIRTH AND GROWTH OF INDIAN NATIONALISM

(Causes)

Indian nationalism, like every such movement in any other

*It is not, however, historically accurate to say, as many do, that history of the Freedom Movement in India is nothing but the history of the Indian National Congress; for, there were other forces and agencies at work, both before and after, to achieve the same end. Nevertheless, the Congress must always form the central theme in any delineation of India's grim struggle for freedom. [It is the pivot round, which revolves or evolves that story of epic grandeur. R.C. Majumdar : *History of the Freedom Movement in India*, Vol. I, P. 387.]

†Moraes : *Jawaharlal Nehru* : P. 458.

country of the world, was the cumulative result of a number of factors operating together. Some of these factors sowed its seed ; some nurtured its growth ; some moulded its form ; and some influenced its ideology and technique. Hence, the causes responsible for the origin, growth and rapid development of the Indian national movement were various and manifold and can be studied as under :

Religious and Social Reformation

The nineteenth century of the Christian era was a period of religious and social reformation. It witnessed the emergence of a number of socio-religious movements like the Brahmo Samaj, the Arya Samaj and the Rama Krishna Mission. The leaders of these movements held the view that there could be no political regeneration without the social and religious reformation. They, therefore, launched a crusade against the obnoxious evils and disturbing influences, which had crept into the Hindu social order. Raja Ram Mohan Roy, the founder of the Brahmo Samaj, was the first amongst these social reformers. He was a man of deep learning and broader vision, who took his stand on the principles of reason and the rights of the individual. He vehemently denounced the prevailing social ills like sati, idolatry, polygamy and rigid caste system. He also protested against the blind acceptance of the authority of priesthood and its interpretation of Hindu scriptures. The standard of revolt thus raised by him against the medieval tyranny of dogma unleashed forces, which 'make him worthy to rank by the side of Bacon and Luther.'

The Raja was also the first Indian to champion the rights of his countrymen with the British Government. He lodged voiced spirited protest against the Press Ordinance of 1823. He wrote against it, moved the supreme court and also sent a petition to His Majesty for the repeal of the Ordinance. He carried a similar agitation against the Jury Act of 1827. Not only that, the Raja also ventured to set the tone towards civil liberties by holding a public dinner in celebration of the French Revolution of 1830. For his manifold activities and patriotism he is justly described as the 'Prophet of Indian nationalism.'

*Raja Ram Mohan Roy is referred to as the father of the national movement...Although he lived several decades before the great age of Indian nationalism, his influence was manifested long after his death. His teachings flowered in 1885 with the formation of the Indian National Congress : *Norman D. Palmer : Major Governments of Asia*, P. 280.

Swami Dayananda Saraswati, the founder of the Arya Samaj, was another apostle of social and religious reformation. He not only fought against social disabilities (like caste prejudices, seclusion of widows, child marriage etc.) but also worked for the creation of an Indian nation. His stirring slogans like 'India for Indians' and 'Back to the Vedas' gave a clarion call to the Indian patriotism, while his fiery speeches imparted a new hope to the degenerated people. He successfully broke the spell of the Western civilisation and taught the young Indians to take pride in their own heritage and culture. According to H.B. Sarda, "Political independence was one of the first objectives of Dayananda. He was the first man to use the term Sawraj ; he was the first man to insist on people using only Swadeshi goods manufactured in India and discard foreign things. He was the first to recognise Hindi as national language of India". Whatever one may think of the claims put forward by the biographer of Dayananda, one cannot be reluctant to admit that Arya Samaj founded by him developed a virile manhood in the nation.

The religious reformers like Rama Krishna Parmahansa and his celebrated disciple Swami Vivekananda also advanced the cause of Indian nationalism. They sang the praises of India's greatness and worked for its world-wide recognition*. Swami Vivekananda, the most well-known patriot of patriots, was the leading figure of the Indian Renaissance. He devoted his life to the awakening of the national consciousness, and his speeches, writings and activities instilled among Indians a deep love for their motherland. His great disciple, Sister Nivedita (An Irish lady named Margret Noble) writes ; "The thought of India was to him like the air he breathed. The motherland was the queen of his adoration and he gave young India a flaming zeal for adoring her." Apart from that, this great patriot anticipated Mahatma Gandhi in preaching fearlessness, in denouncing untouchability and in his burning enthusiasm for the uplift of the masses. In the words of R.G. Pradhan, "Swami Vivekananda might well be called the father of Indian nationalism ; he largely created it and also embodied in his own life its highest and noblest elements."

*At the Parliament of world religions held at Chicago in 1893, Swami Vivekananda captured the imagination of all by his courageous presentation of Hindu religion and made place for Hinduism in the cultural map of the modern world. In the words of Sir Valentile Chirol, "Vivekananda was the first Hindu whose personality won demonstrative recognition abroad for India's ancient civilisation and for her new-born claim to nationhood."

The Indian nationalism drew a great inspiration also from the Theosophical movement. The message of its leaders like Col. Olcott, Madame Blavastsky, Dr. Bhagwan Das, Sir S. Subramania Aiyar and Mrs. Annie Besant raised the Indians in their own estimation and made them feel justly proud of their civilisation. According to K.M. Panikkar, "The social doctrines of the Theosophical Society were progressive and more important, and it cut through the sectarian lines of Indian religious organisation."*

To sum up, the religious reformers of the nineteenth century purged Hinduism of its obnoxious customs and superstitions, developed among Indians a love for their motherland and civilisation and also inspired them with new ideas and aspirations. Thus, they prepared in our country a soil, where the emergence of Indian nationalism was but natural and certain.

Historical Researches

Some European scholars in India evinced a great interest in the Indian culture. Sir William Jones, MaxMuller, Jacobi, Roth, Colebrook, A.B. Keith etc. etc. devoted themselves to the historical researches. They not only unveiled our rich cultural heritage but also glorified it by singing its praises. The excavators and archaeologists like Marshall and Cunningham opened up to the Indians the past history of their cultural expansion. It was a pleasant surprise for them to know that their ancestors had established Hinduized kingdoms and empires in the Pamirs, in Malaya, in the Indonesian Archipelago and the fertile valleys of the Mekong. These historical findings by the British archaeologists, historians and scholars made India better known to the Indians themselves. They revived their faith in themselves and their traditions. They also developed among them a new sense of pride in their heritage and civilisation. To quote R. C. Majumdar. "The regular archaeological explorations and excavations, commencing in A.D. 1861 under the personal

*"Theosophic Hinduism was an all-India movement and it profoundly affected the outlook of the new generation. When Mrs. Annie Besant, the extremely gifted, persuasive and dynamic personality, who had already attained wide renown, became the President of the Society, its propaganda for ■ reformed universal Hinduism became more marked and was carried on incessantly through schools, colleges, lectures and popular literature". K. M. Panikkar. *The Foundations of New India*, P. 30-31.

†Sir William Jones, the founder of the Asiatic Society of Bengal, was a Sanskrit scholar. He unveiled the treasure of Indian literature to the world. His translation of Kalidas's 'Shakuntala' may be said to make the beginning of European interest in Indian culture.

supervision of Alexander Cunningham, and the writings of Max-Muller, Wilson, Fergusson, Rajinder Lal Mitra and others in a more popular form, brought home to the educated Indians a very vivid picture of the glory and greatness of ancient India, which placed her on the same pedestal as Greece or Rome.....This revelation could not fail to stir deeply the hearts of the Indians, with the result they that were imbued with a spirit of nationalism and ardent patriotism”*.

Western Education

The spread of western education through the English language also fostered the spirit of nationalism among the Indians. It eradicated the ravages of ignorant customs and pernicious superstition ; it dealt a blow to the prevailing prejudices ; it stimulated the thought and emancipated the spirit, it gave to India a common language for political thinking and action. According to K.M. Panikkar, “The uniform system of education throughout India through a single language produced among Indians the like-mindedness, the community of thought, feeling and ideas”. All this, in combination, contributed greatly to the Indian unity and to the emergence of a new sense of nationalism.

The study of English literature implanted into the Indian mind the love of liberty) } The passionate lyrics of Byron singing praises of love, liberty and freedom, the thought-provoking sonnets of Wordsworth upholding the dignity of mankind and the impressive odes of Shelley preaching revolt against tyranny of priesthood and despotism, awakened the Indians from their age-long torpor. They also inspired them with new ideas and aspirations. The catchy slogans of equality, fraternity and liberty—so common in the history of English literature—provided them with a wine, which went direct into their heads. The educated Indians, in consequence, became bold, brave and patriotic, and they began to think seriously of India’s freedom.

The English language enabled the Indians to study western political thought and philosophy. They learnt about the modern political concepts, such as nationalism, nationality, patriotism and political rights. The political theory of West, especially of Locke and Spencer, and writings of Mill, Macaulay and Burke found favour with the Indians. They did not fail to exercise a profound effect on their political thinking.

Consequently, the contrast between an England governed by a Parliament based on popular sovereignty and an India governed under the authority of the same Parliament by an alien bureaucracy, which denied the rights of the people and restricted their liberties, became galling for the Indians. They were also awakened to the depth of their degeneration. This political awakening, not unnaturally, gave a new outlook to the educated Indians. It also lent strength to the developing national movement.

English also provided opportunity for the Indians to know about Europe and the new world. They read through this medium the history of France, Germany, Italy, America, Greece and many other countries. They studied the accounts of such thrilling events as the French Revolution, the Greek War of Independence and the American Revolution. They also learnt about the various ways of fighting the struggles of independence. All this infused a new confidence and courage among the Indians and taught them the lesson of sacrifice and service.

English proved useful to the cause of nationalism in another way also. It gave the Indians for the first time a common language (*lingua franca*) necessitated for the exchange of ideas, concerted action and national unity. With the help of this medium of communication, the representatives from the different parts of India could meet and discuss the national problems. They could better appreciate the needs and difficulties of their countrymen. They could also chalk out a common programme of action. It was the English language that enabled Surendranath Bannerji to undertake a tour of northern and western India to enlist popular support for his campaign against the lowering of the age-limit for the Indian Civil Service Examination*. Thus, the English language proved a great nation-building force for the Indians. (According to Edward D'cruz, 'but for English no country-wide nationalist movement could have come to birth and flourished in India'.)

*During the viceroyalty of Lord Lytton, the Secretary of State for India reduced the maximum age-limit for the Civil Service Examination from 21 to 19 years. This measure was a deliberate attempt on the part of the British Government to blast the prospects of educated Indians aspiring for the higher services in their own country. Surendranath Bannerji undertook a whirlwind tour of Northern India in the course of which he addressed crowded meetings at important places. Everywhere he was received with great enthusiasm.

To sum up, the English language unlocked on the Indians the store-house of western learning ; it gave them the much-needed sense of freedom ; it leavened their minds and imparted to them an English tone of revulsion against oppression. It also welded the natives into one political mass with a community of feelings on Indian subjects. All this gave a new life and vigour to the dawning sense of nationalism.

British imperialism and Economic distress

The British administrators in India never lost sight of the permanent interests of British industry and commerce. They exploited our country by gearing India's economy to that of Britain. They continued to make India a market for the sale of the British goods and a supplier of the raw material. They traded in favourable circumstances, manipulated the tariff to their own advantage and hindered the growth of Indian industries by unreasonable restrictions. They also charged excessive land revenue from the peasants. This policy of theirs led to enormous drain of wealth from India to Britain and made our country the poorest in the course of a century. In consequence, more than three-fourths of the people could not secure two square meals a day and almost perpetually lived in a semi-starving condition. To aggravate the situation, some six appalling famines and a few minor draughts caused uncommon devastation. These unbearable conditions created a great discontent and disaffection, which were further intensified by the British policy of keeping India in perpetual subjection. The British statesmen openly declared : "India has been conquered by the sword and shall be maintained by the sword".

The anglicised Indians had their own grievances against the British. Despite their requisite educational qualifications, they could not get in India high posts, which were kept as a closed reserve for the Britishers. This state of affairs was, indeed, distressing. The more so, because the authorities often put unnecessary hurdles to blast their prospects. The educated Indians, therefore, lost faith in the British sense of justice and lent their support to the developing national movement. Some of them even came forward as its leaders and guided its course.

Arrogance and oppression of the British

The Englishmen were very arrogant and oppressive in their dealings with the Indians. They did not hesitate to denounce them as despised barbarians with hardly any culture and civilisa-

tion. The average Englishman kept the Indians at arm's length and thought it below his dignity to have any relation with the latter. The doors of the English clubs in India were barred on the anglicised Indians. This social exclusiveness, not unnaturally, wounded the susceptibilities of the Indians. Worse still, the Englishmen often openly insulted and even assaulted the Indians of high rank and position. The ordinary Indians (particularly the servants of the Englishmen) were administered kicks and beating, which sometimes led to their death. This arrogance and cruelty of the English men in India made them notorious, and also created among Indians a strong revulsion against oppression. It welded them into a patriotic mass to fight against British injustice.

Racial antagonism and national distress

The British policy of racial discrimination, characterised by repressive measures and anti-national enactments also lent strength to the Indian nationalism. This invidious policy was, in fact, being followed since the day British became our rulers, but it proved more obnoxious in the post-Mutiny period. During the viceroyalty of Lord Lytton (1876-1880) the racialism became the creed of our rulers. The Governor-General enacted discriminatory measures like Vernacular Press Act, 1878 and Arms Act, which roused a storm of indignation*. The agitation over the Ilbert Bill (1883) carried the racial animosity to the highest pitch. It revealed the racial arrogance of the Europeans in its grim nakedness and evoked a corresponding bitterness in the hearts of the Indians. Even hot words were exchanged between the members of the two races. The Europeans, in the height of their indignation, styled the Indian judges as '*ebony-coloured babus*,' and the Indians also retaliated with equal vehemence. At a crowded meeting in the Town Hall of Calcutta, Mr. Lal Mohan Ghosh is said to have described the white officers as '*one anna*'-'*half anna*' Europeans who were neither flesh nor good herring."† This national

*The Vernacular Press Act, 1878 required the editors of the vernacular papers to enter into a bond to publish nothing likely to excite feelings of disaffection against the Government. This measure was highly invidious as the English Papers were exempted from the Act. By the Arms Act the inoffensive and helpless Indians were completely disarmed. This was also a discriminatory measure.

†The Ilbert Bill sought to remove certain racial inequalities by empowering the Indian magistrates in the districts to try both European and British subjects. The prospect of being tried by black magistrates produced a terrible expansion of racial feeling among the Europeans. They organised a violent agitation against Lord Ripon and compelled him to whittle down the Bill.

agitation not only strengthened the feeling of racial self-respect but also advanced the cause of Indian unity. For, it amply revealed that an organised agitation alone could deflect the Government from its purpose.

✓ *Indian Press and Literature*

The contribution of the Indian press and literature towards the growth of Indian nationalism was no less significant. In spite of various handicaps and hurdles in their way, *The Amrit Bazar Patrika*, *The Indian Mirror*, *The Hindu*, *The Kesari*, *The Bengali*, etc. etc. remained sufficiently watchful of Indian interests. Through them were propagated the views of the Indian leaders, through them were voiced the sufferings of the natives, through them were made the calls for unity, and through them were exposed the evils of British imperialism. The articles in them continued to exercise a patriotic influence. Besides, the mechanical production of a large number of copies in a short time by press considerably helped the diffusion of knowledge. The new spirit of the age did not remain confined to a select few, but its influence spread over a larger section of people.

The writings of the Indian literary figures also made a strong appeal to our infant patriotism. Shri Bankim Chandra Chatterjee's *Bande Matarum* (our national anthem up to 1947) became the rallying cry of the Indian nationalists. Thousands of them succumbed to the lathi-blows of the British police or mounted the scaffold with this national anthem on their lips. The soul-stirring poems of Shri Hem Chander Bannerji also gave a great stimulus to the newly awakened sense of nationalism. His brilliant satire on the Anglo-Indian agitation against the Ilbert Bill put a new self-assertiveness into the people.* Similarly, the literature produced by Keshava Chandra Sen, Rabindra Nath Tagore, Nabin Chandra Sen and Ranlal could not but create love for national freedom.

Modern Means of Communication

The Britons gave India swift means of transport and communi-

*Our famous national leader Shri Bipan Chandra Pal has described Hem Chandra's influence upon him in these words: "Hem Chandra, however, was our special favourite. The intense patriotic passion that breathed through his poems captured our youthful minds in a way which no other Bengalee poem had done.....He was, in a special sense, the poet of racial conflict and the new racial self-respect and sensitive patriotism, born of it." *Pal Memoirs II*; P, 48—52.

cation. They spread in our country a net-work of railways, roads, telephones and postal service. They reaped various advantages from this huge undertaking, which also proved useful for the Indian nationalism. The modern means of communication broke once for all the age-old isolation of the Indian villages and brought them closer. They encouraged intercourse and migration. They enabled the Indians to travel with safety and speed from one part of the country to another. This, consequently, made them bold, enterprising and progressive. The dead weight of their orthodox habits was also lifted, for, the progressive thought and modern literature became available to them only with the help of well-regulated and easy means of transportation. The modern means of communication helped the national unity in another way also. They encouraged the forging of a large number of social, economic links between the different parts of India. This, gradually, assisted the process of unification and promoted the cause of Indian nationalism.

Political Unity of India

The administrative integration and transport system unified India as she had never been before. She saw a long period of internal and external security under the strong central government. The British also provided All India Services and codification of laws to effect uniformity and efficiency in the Indian administration. These conditions made the Indians think of India as *one* country and her people as constituting one nation. This feeling of oneness was further strengthened by the fact that the Indians lived under the same government and were subjected to the same discriminatory treatment and even exploitation. This gave them in turn the common purpose necessitated for a united and concerted action. Hence, the Indians, despite their numerous diversities of blood, colour, language, sect, dress or manner, learnt to act as one nation. This national unity provided the basic factor for the rise and growth of nationalism.

Healthy Influence of Foreign Movements

According to R.C. Majumdar, "The strong current of nationalist ideas, which passed over the whole of Europe during the nineteenth century, must have stimulated the growth of nationalism in India. The ideas and events culminating in the American independence and the French Revolution in the later part of the 18th century, the glorious struggles for freedom in different regions of Europe in 1830 and 1848, and the stories of heroic resistance and untold sufferings associated with them, made a profound

impression on the English-educated Indians. In particular, the liberation from foreign yoke of Greece and Italy, two ancient centres of culture like India, and the fight for freedom by the Irish, subject to servitude under a common master, deeply stirred the emotions of Indians, and evoked feelings of nationalism of the same type.* The Indians were also encouraged to see that the British, as champions of the popular government, were backing the cause of various down-trodden nations. All these happenings beyond the borders of our country also lent strength to the developing national movement in India.

Contribution of the New Middle Class

As a result of the British policy in India, there arose in our country a new middle class with a general unity of vision, a competent leadership and a common mental background and intellectual equipment. It had a language, ideas and attitudes in common; it had a common mind and speech as no other middle class in India had before. Besides, it could take an all-India view of the problems. This class consisted of teachers, doctors, bankers, writers, merchants, industrialists and men of legal profession. These people were learned, eloquent, ambitious. They were capable of giving a lead to the masses. They provided the much-needed leadership to the Indians and thereby rendered a great service to the cause of nationalism. According to K.M. Panikkar, "Among the leaders of the country, who met to establish the Indian National Congress in 1885, all, but a few businessmen and journalists, were lawyers who had achieved undoubted eminence in the profession. Of the Presidents of the Congress during the first fifteen years ten were lawyers". The role of some eminent industrialists was also no less significant. Dadabhai Naoroji, a pioneer in trade, was twice President of the Indian National Congress. D.E. Wacha, a well-known industrialist, was the organisational chief of the Congress for many years. He also acted as its President. Some other leading men in the industrial life, who remained associated with the nationalist movement, were Sir Cowasji Jehangir and Sir Manakji Dadhabai.

Consciousness among Indians

As a result of the above-mentioned various factors, the Indians became conscious of the wrongs, which were being done to them by their masters. They also learnt about the various methods of fighting against the British imperialism. This consciousness proved the

*Majumdar R.C. : *History of the Freedom Movement in India* : P. 328.

most potent factor for the rise and growth of virile nationalist movement. To quote Dr. Ishwari Prasad, "The consciousness of the French that their troubles were due to the Bourbons led to the French Revolution, of the English that their troubles were due to the unrestrained prerogative of the Crown led to the Civil War, and of the Indians that their troubles were due to British rule led to the formation of the Indian National Congress in 1885, whose object was to secure India's liberation".*

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CHAPTER 15

The Indian National Congress

ITS FORERUNNERS AND FOUNDATION

As a result of the growth of nationalism in our country, there started a forward movement in political ideas and organisations. A large number of public bodies like British India Society, British Indian Association, India League, Indian Association, Bombay Association etc. etc. came into existence and a demand for setting up a representative government in India also came into the forefront. The evolution of these ideas and organisations culminated into the emergence of the Indian National Congress. To quote R. C. Majumdar, "There was no sudden emergence of the Indian National Congress and there was nothing novel either in its ideas or methods, for, the National Conference held in Calcutta in 1883 and 1885 forestalled it in all essential aspects".* Hence, the political organisations and public bodies, which sprang up in the later half of the nineteenth century may aptly be called the fore-runners of the Indian National Congress. A brief account of the birth, aims, objects and achievements of these public bodies is essential to familiarise the readers with the political activities, which had been in progress in India prior to the foundation of Indian National Congress.

*Majumdar R. C. : *History of the Freedom Movement in India*. Vol. I P. 387

1. *British India Society, 1843*

As early as 1843, a public body known as British India Society was founded in Bengal, which was in those days the vanguard of Indian political thought and aspirations. The object of this organisation, as defined by Tara Chand Chakravarty, was "the collection and dissemination of information relating to actual condition of the people of British India.....and to employ such other means of a peaceable and lawful character, as may appear calculated to secure the welfare, extend the just rights, and advance the interests of all classes of our fellow-subjects". Though this society did not gain much popularity, yet it definitely roused the political consciousness of the people. About the year 1851, it was amalgamated into a new political body named the British Indian Association.

2. *British Indian Association, 1851*

(The British Indian Association was founded in Bengal in October, 1851. From the very beginning it had an all-India outlook. It tried to establish its branches in other parts of the country but could not achieve much success. Of course, independent political associations of the same nature were established at Poona and Bombay.

(The British Indian Association carried on its work under the able guidance of Dr. Rajendra Lal Mitra, Ramgopal Ghosh, Peary Chand Mitra and Harish Chandra Mukherjee. It agitated for political concessions to the British Indian subjects. In 1852, when the new Charter Act was under consideration, it sent a petition to the British Parliament embodying the demand for a Legislative Council. It also demanded the inclusion of Indians in the Legislative Council and the holding of the Civil Service Examination in India. Besides, the Association brought to the notice of the local government the manifold grievances of the people and suggested various measures for reform. It established local branches and tried to rouse the interests of the masses in political questions. In short, the British Indian Association played a decisive role in rousing political consciousness among the Indians and its agitation forced the British Parliament to make some concessions to their demands in the Charter Act of 1853.

3. *India League, 1875*

The British Indian Association did not prove equal to the task of pursuing the higher political ideals. So, a few advanced political

thinkers of Bengal started in 1875 a new association called "India League". The object of the India League was 'to stimulate a sense of nationalism amongst the people and to awaken political consciousness among them'. Its organizers claimed that "this is the first instance of a political body formed by public announcement and a call upon the nation to attend it and mould it to their liking". The Anglo-Indian Daily of Calcutta, *the Englishman*, referred to this new political organisation as "the first marked sign of the awakening of the people on this side of India to political life".* This organisation, however, had a very brief career. It soon gave place to another public body known as Indian Association.

4. Indian Association, 1876

The Indian Association was inaugurated at a public meeting held at the Ilbert Hall, Calcutta on July 26, 1876. This conference was attended by more than seven hundred persons. The objects of this organisation, as explained by Surendranath Bannerji were : (1) The creation of a strong body of public opinion in the country ; (2) the unification of the Indian races and peoples upon the basis of common political interests and aspirations ; (3) the promotion of friendly feelings between Hindus and Muhammadans ; and lastly, (4) the inclusion of the masses in the great public movements of the day".†

Soon after its inception, the Indian Association was called upon to fight against the new regulation of the British Government reducing the age-limit of the competitors for the Indian Civil Service Examination from 21 to 19. The Association took up this question in right earnest and started a strong political agitation. Surendranath Bannerji made a very long tour of northern India on behalf of the Association and addressed crowded public meetings at various places. This propaganda tour of Surendranath Bannerji from one end of India to another considerably promoted political progress and set a stage for the emergence of an all-India political organisation. According to Prof. Hira Lal Singh, "Surendranath Bannerji began his political career with the Civil Service Movement which in a sense became a precursor of the more comprehensive political movement, namely,

*Bengal, I. C. History of Indian ; Association : P. 8.

†Nation. P. 24.

the Indian National Congress".* The Association agitated also against reactionary measures like the Vernacular Press Act, the Arms Act and the Licence Act. It sent Mr. Lal Mohan Ghosh to England with a memorandum to the British Parliament on the Civil Service question. His eloquent speech in a public meeting there created a profound impression upon the English audience. During the days of Ilbert Bill controversy in 1883, the Association carried on a hurricane of agitation, which strengthened the feeling of racial self-respect among the Indians.

5. *Bombay Presidency Association*

In the early fifties of the 19th century, the Bombay Association had been founded in the western Presidency, but it lost its vitality within a decade. The efforts of Mr. Naoroji Furdunji to put fresh life into it did not prove useful. Then, Pherozeshah Mehta and Badr-ud-din Tyabji conceived the idea of starting a new political association. This led to the birth of the Bombay Presidency Association, which showed considerable activity in the earlier years of its existence. Its resolutions, memoranda and public meetings focussed the general feeling of the community on all matters of common interest and thus paved the way for its political progress.

6. *Poona Sarvajanik Sabha*

Another important political association of the time was the Poona Sarvajanik Sabha. It was established in 1867. Its object was to represent the wants and wishes of the inhabitants of the Deccan. The members of the Sabha consisted of the Sardars, Jahgirdars, Immamdars, Sahukars and the gentry representing the people of Maharashtra. The Sabha rendered a great service to the people of Maharashtra by awakening in them political consciousness. It continued to function as a public body till the end of the nineteenth century.

7. *National Conference*

The political activities in the later half of the nineteenth century brought into forefront the necessity of an all-India organisation. The need for the same was more acutely felt during the violent agitation over the Ilbert Bill. Encouraged by these favourable circumstances, the Indian Association took the initiative. It convened an all-India National Conference at Calcutta in the end of December 1883. This conference was

*Singh Hira Lal ; *Problems and policies of the British in India* : P. 27.

attended by more than one hundred delegates representing (outside Bengal) various places like Bombay, Madras, Ahmedabad, Allahabad, Lahore, Nagpur, Cuttack, Meerut, Bankepur etc. etc. It was also attended by two Englishmen, one of whom was Mr. Blunt. The proceedings of this Conference began with a national hymn. Its President, Mr. Anand Mohan Bose, in his opening speech remarked that it was the first stage towards a national parliament. Mr. Surendranath Bannerji delivered a long speech in which he observed that the objects of the National Conference were not sectional nor regional but truly national. He also pointed out that "we have met to talk, to deliberate, to consult, and if possible, to arrive at common programme of political action".

BIRTH OF THE INDIAN NATIONAL CONGRESS, 1885

Hume's Open letter and its foundation

When the idea of setting up an all-India organisation was in the air, Mr. A.O. Hume, a retired member of the Indian Civil Service, took the much-needed initiative. He addressed an Open Letter (on March 1, 1883) to the young graduates of the Calcutta University, in which he made an appeal to form an association for the moral, social and political regeneration of the Indians. He also impressed upon them the "eternal truth that self-sacrifice and unselfishness are the only unfailing guides to freedom and happiness". This appeal of the British friend did not go in vain. The 'Indian National Union' was formed towards the close of 1884, and Hume was put in charge of it.

About a year after the formation of the Union, the delegates from all over the country met at Bombay in December, 1885. Mr. W.C. Bonnerji presided over the first session of this conference. On the suggestion of Dadabhai Naoroji, the Grand Old Man of India, the Indian National Union was named as Indian National Congress. Thus came into existence the celebrated organisation, which later on proved to be the most powerful instrument of our national liberation.

Hume's object in its foundation

Our country men are deeply indebted to Mr. Hume for the role he played as founder of the Indian National Congress. He had, no doubt, a genuine sympathy for the interests and welfare of the Indians. But the reasons, which induced him to conceive the idea of a political organisation like the Indian National Congress, were

entirely different. It is held that he had got a definite information about the seething discontent among the Indian masses and apprehended an imminent danger to the Government.* To arrest the progress of this fast developing unrest, Mr. Hume, at first, planned to establish an all-India social organisation, leaving the political work to the existing provincial associations. But, on the suggestion of Lord Dufferin, who impressed upon him the need of an organisation, which might perform functions similar to those of His Majesty's Opposition in England, he gave the Congress a political complexion.† The Indian National Congress was thus designed to counteract the growing unrest in the country and thereby serve as an instrument for safeguarding the British rule in India. Mr. Hume candidly expressed it himself in the following words : "A safety-valve for the escape of great and growing forces, generated by our own action, was urgently needed, and no more efficacious safety-valve than our Congress movement could possibly be devised".‡

Reaction of Indians towards its foundation

Though the Indian National Congress had been founded to safeguard the British rule in India, the Indian leaders nevertheless responded to the clarion call of Mr. Hume. Perhaps they held that the Government would not look with kindly eye upon any political organisation of the Indians demanding substantial reforms

*He was informed by some religious devotees that the ominous unrest, which pervaded even the lowest strata of the population, would lead to some terrible outbreak, destructive to India's future unless men like him, who had access to the Government, could do something to remove the general feeling of despair and thus avert a catastrophe.

†It would have been a great misfortune for the Congress if it had decided to enter upon a career of social reform. A national body like the Congress, composed as it was of men belonging to different castes and communities, could only at a great peril to its existence, play a social role...Its dissociation from a programme of social reform contributed on the whole to its strength and unity. *Hiralal Singh : Problems and Policies of British rule in India*, P. 211.

‡Mr. Hume started the Congress not for the betterment of India but for strengthening the foundation of British *Raj*. He had written in his memorable letter : "Every nation gets precisely as good government as it merits". How much so ever one may be thankful to Mr. Hume for founding an organisation, which has by its efforts grown mighty like an oak.....the motive behind it was not the liberation of India from foreign yoke but to make the British rule strike firmer and surer roots in India. Where sword had failed Mr. Hume wanted sweet words and pleasant promises to capture the imagination of Indians." *Satyapal and Prabodh Chandra : Sixty years of Congress*. P. 110.

in the administration. But, if the leading part were taken by an Englishman, who once held a high office, the hostility of the official class would be considerably neutralised. The great Indian leader Gopal Krishan Gokhale gave expression to this view when he observed, 'No Indian could have started the Indian National Congress...Any one undertaking so great an enterprise would need a personality and influence possessed by few Indians at the time...If an Indian would have the temerity to launch it, it would have been nipped in the bud by the officials. Had not the founder of the Congress been an Englishman and a distinguished ex-official, such was the official distrust of political agitation in those days, that the authorities would have at once found some way or the other of suppressing the movement'.

Objects of the Congress

The objects of the Indian National Congress were explained at its first session held in Bombay on December 25, 1885. Mr, W. C. Bonnerjee,* who had the honour of being its first President thus explained its objects.

(1) The promotion of personal intimacy and friendship amongst the workers in our country's cause in the various parts of the Empire.

(2) The eradication by direct intercourse of all possible race, creed or provincial prejudices amongst all lovers of our country and the fuller development and consolidation of those sentiments of national unity that had their origin in their beloved Lord Ripon's memorable reign.

(3) The authoritative record (after this had been carefully elicited by the fullest discussion) of the matured opinions of the educated classes in India on some of the more important and pressing social questions of the day.

(4) The determination of the lines upon which during the next twelve months it was desirable for native politicians to labour in the public interest.

*W.C. Bonnerjee was one of the eminent lawyers of Calcutta. He writes that in April, 1885 Mr. Allan Octavian Hume saw many friends in Calcutta. He placed before them his original plan and the plan suggested to him by Dufferin. He (Bonnerjee) was also consulted. Bonnerjee further writes that "It was to a great extent on my advocacy that the Congress leaders agreed to leave out social questions from the Congress Movement and make it a purely political one." *The Hindustan Review*, December 1903.

These objects of the Congress, however, changed with the passage of time. As revealed by the resolutions passed at the annual sessions of the Congress, it demanded only piece-meal reforms in the beginning. But gradually it shifted its objective from piece-meal reforms to self-government and then to complete independence. The methods to achieve its objects also underwent a gradual change. In the early years of its career, the Congress adopted such constitutional methods as petitions, resolutions and deputations. But later on, with the change in its goal, it shifted to the methods of non-co-operation and civil disobedience.

The Character of the Congress

The character of the Congress was deliberately misunderstood and misrepresented in certain quarters. Lord Lytton observed that its members represented nothing but the social anomaly of their own position. They were drawn almost from a small section of Indians, who spoke English and had acquired western education. As such, they had very little claim to speak for the great mass of their fellow countrymen. It was also contended that its activities were looked upon with disfavour by the greater part of the Muhammadan community and the ruling chiefs. The landed classes held aloof.

Despite this uncharitable attitude of the authorities, the Congress was from its very inception a thoroughly national body. Its doors were open to all classes and communities. It spoke in the name and on behalf of the nation. Its programme was broad enough to accommodate all interests. According to Prof. Hira Lal Singh "there was nothing in its programme to which any class could take exception". It was a supporter of the interests of the landed class, and though it kept the affairs of the Indian states outside its programme, it was nevertheless a friend of the Indian chiefs. In 1889 Mr. Charles Bradlaugh, who was a great supporter of the Indian National Congress, took up in Parliament the cause of the deposed Maharaja of Kashmir. In 1896, the Congress passed a resolution that no prince should be deposed on the ground of maladministration or misconduct until the charge was established to the satisfaction of a public tribunal commanding the confidence alike of the Government and the Princes. The Congress also favoured the landed classes in so far as it stood for Permanent Settlement, which had proved advantageous to the Zamindars".

The landed classes on their part had no dislike for the Congress. It was due to the unsympathetic attitude of the Government towards

the Indian National Congress that they held aloof. If the masses in its early years did not take part, it was partly due to the lack of education and partly to the absence of any programme of mass contact. Besides, even if the aristocracy and the masses held aloof from the movement, it was no disparagement to its national character. For, the Congress generally transcended all local and exclusive interests.

It would not be out of place to mention here that the Congress was nurtured by the members of all major Indian communities as also by persons hailing from all parts of the country. It was conceived in the brain of an Englishman, Mr. A.O. Hume, who is affectionately known as its founder father. It was nursed in its infancy by two great Parsis—Sir Pherozshah Mehta and Dadabhai Naoroji. From the very commencement of its career, the Congress had the good wishes of enlightened Muslims like Badr-ud-din Tyabji. Many of its presidents have also been Muslamans.

Those, who object to its national character on the ground that majority of its members and office-bearers have always been Hindus, sadly forget the preponderance of the Hindus in the Indian population. They also ignore the anti-national efforts of Sir Sayed Ahmed Khan and others, who strained every nerve to keep the Muslims out of its fold. The Indian National Congress, as its history of more than sixty years reveals, has always been a national organisation both in its activities and outlook. And it has firmly upheld its national character even amidst various vicissitudes..

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CHAPTER 16

Indian National Movement (1885—1919)

After the National Congress had come into existence, the Indian nationalism began to grow year by year. For the first two decades (1885—1905) of its growth, it was led, manned and controlled by such nationalists as pursued for the most part a very moderate course. This period of twenty years, therefore, came to be known as period of Moderate Nationalism. Since the same persons held the leadership of the Congress as well as that of nationalism, the two movements, therefore, became synonymous.

The national movement after 1905 witnessed an important change in its course and character. The Congress ceased to be the representative of all elements in Indian national life and extremist nationalists became a great political force for the Government to be reckoned with. Besides, the Indian nationalism took an assertive form. All this, in consequence, led to the evolution of a new phase in the movement known as Militant Nationalism. This new phase of the movement remained dominant in India's political life till 1919. Thus, the Indian national movement during 1885 to 1919 passed through two distinct phases dividing this period of about thirty five years into : (a) Period of Moderate Nationalism (1885—1905) and (b) Period of Militant Nationalism (1905—1919).

SECTION I

PERIOD OF MODERATE NATIONALISTS

(1885—1905)

From 1885 to 1905 the Moderate nationalists were the most important persons in India's national and political life. They held the leadership of the Congress and determined its programme and course of action. Through their leadership of the Indian National Congress they also moulded the public opinion in the country. The British Government looked upon them as men, who mattered in the Indian political life and watched their activities with interest and suspicion. The eminent Moderate leaders of this period were : Dadabhai Naoroji, Surendranath Bannerji, Pherozeshah Mehta, Gopal Krishna Gokhale, M.G. Ranade and Pt. Madan Mohan Malaviya.

Political beliefs of the Moderates

The Moderates were essentially friendly to the British. They held that the stability of the British rule in India was the *sine qua non* of India's progress. They looked upon the railways, the postal system, the law courts etc. etc. as some of the blessings of the British administration.* They believed that the British nation was essentially just and good and that, if it could be acquainted with the true state of Indian affairs, all their grievances would be redressed. The only obstacle to reforms, in their opinion, were English officials, who stood between them and their just rights.† Convinced as such, these early Congressmen had a leaning towards the West, affirmed their loyalty to the British Crown and acknowledged with gratitude the grant of concessions.

Demands of the Moderates

The Moderates urged the British Government to introduce a

*Gopal Krishan Gokhale paid a handsome tribute to Britain : "The blessings of peace, the establishment of law and order, the introduction of western education, freedom of speech and appreciation of liberal institutions, which have followed in its wake—all these are things, which stand to the credit of British rule".

†"The fertility of the Congressmen's imagination, which drew such a nice distinction between the nation and the machinery which it had set up for the administration of the ruled, evokes surprise and pity. They failed to understand that the British machinery in India was only carrying out the orders of that section of the British people which exercised the ruling power". *Singh Hira Lal : Problems and Policies of the British India*, P. 216.

number of reforms in the existing system. Their principal demands were: the reorganisation of the Legislative Councils, the abolition or reconstruction of the India Council, the repeal of the Arms Act, the separation of the judiciary from the Executive, the appointment of Indians to the commissioned ranks, the provision for the holding of I.C.S. examination simultaneously in India and England, the removal of restrictions on the press, the reduction of military expenditure etc. etc. It is interesting to note that these demands of the Moderates, formulated at the first two or three sessions of the Congress, remained more or less the same during the first twenty years. Neither the British Government made any genuine effort to fulfil these demands, nor did the Moderate eliminated them from their programme. ■

Methods of the Moderates

The Moderates had great faith in the efficacy of peaceful and constitutional agitation. They carried on their propaganda work through the press, the platform and annual sessions. To impress the justification of their demands upon the authorities, they also sent at times deputations and petitions. The press was their very powerful agency, because many Congress leaders were themselves the editors of newspapers, which appeared in English or Indian languages. According to Prof. Singh : "Among the various methods of Congress propaganda the holding of annual sessions was by far the most important. It was at these meetings that the Congress leaders discussed the Government's policy and put forward their demands in an authoritative manner, and it was then that the Congress machinery was in full swing. Besides, the annual sessions not only attracted the attention of the educated classes but also of the Government".

Moderates' Propaganda in England

The Congress leaders like Dadabhai Naoroji, Wedderburn and A.O. Hume laid much emphasis on the need of propaganda in England.* They held that, if the British nation and Parliament were properly informed of the Indian affairs, success would soon follow. Dadabhai Naoroji wrote in October, 1898 ; "Any well-directed effort *here* will always be far more effective, as this is the

*Sir William Wedderburn was a member of the Indian Civil Service. On retirement in 1887, he associated himself with the Congress. To him belongs the credit of running the British Congress Committee for years. For more than 30 years the Indian National Congress was the master concern ■ his public life. Its activities and aims were never out of his thoughts.

fountain-head, where the chief work lies". Hence, Wedderburn and Naoroji started the Congress movement in England and the regarded it as important as that in India. In 1888, a paid Indian Agency was set up in London under the charge of William Digby. The next year saw the formation of the British Committee of the Indian National Congress. The foundation of this Committee was quite significant in so far as it placed the Congress propaganda on an active and organised footing. It started a monthly paper, called *The India*, which supplied an authoritative and detailed information about the progress of the national movement both in India and England. In July, 1893 the British Committee succeeded in forming an Indian Parliamentary Committee. It consisted of persons, who were willing to co-operate in favour of a just and favourable policy towards India. With the election of Dadabhai Naoroji and Wedderburn to the British Parliament there started a more effective propaganda of the Congress in England. The supporters of the Congress succeeded in carrying through a resolution for the holding of I.C.S. examination simultaneously in India as well as in England. Naoroji's amendment to the Madras and Bombay Armies Bill was also accepted. It is said that the Congress voted every year about £ 3,000 for carrying on the propaganda work in England.

Besides these committees, which carried on propaganda in an organised way, some isolated individuals like John Bright, Henry Fawcett and Charles Bradlaugh also took keen interest in the Indian affairs. Bradlaugh was a strong advocate of the Indian cause in the British Parliament. During 1888-1890 he asked questions on almost all the important matters relating to India. In 1890, he introduced two Bills, which provided for the enlargement of the Indian Legislative Councils and the extension of their functions. His death in 1891 was regarded as a serious loss to India. Some other British members of the Parliament viz., Schwann, MacNeill and Seymour Keay also lent their support to the Indian cause. Mr. Schwann laid emphasis on the representative character and elective basis of the Indian National Congress. He often pointed out that it represented, to a great extent, the national voice of India. Similarly, Mr. Samuel Smith, a great supporter of the Indian national movement, emphatically remarked that the Congress was loyal and constitutional. All these efforts of the British friends was no mean service to the Indian nationalism. They gave added weight to the Congress propaganda in England.

The Congress also sent delegates to England from time to time. Their first official deputation consisting of Surendranath Bannerji, R.N. Mudholkar, W.C. Bonnerjee, Norton and A. O. Hume visited England in 1890. Its members delivered many lectures on Indian affairs. Mr. G.K. Gokhale, Surendranath Bannerji, D.E. Wacha and G. Subramania Iyer, who had gone to England to give evidence before the Welby Commission, also addressed a large number of meetings.* They too made a very good impression on the British public opinion. Mr. A.M. Bose and Bipin Chandra Pal had the opportunity to visit England in 1898 and 1899 respectively. They too pleaded the cause of India very successfully. Thus, the Moderates during their period of twenty years carried on their work smoothly and steadfastly and did their best to keep the interest of the British in India alive.

Achievements of the Moderates

The policy and programme of the Moderate nationalists did not find favour with the Indian youth. They ridiculed their method of agitation and denounced them as 'political mendicants.' But, despite this attitude of the young nationalists, these early Congressmen made a notable contribution towards the growth of nationalism. It was under their leadership that the Congress regularly held its annual sessions, passed resolutions, sent deputations and thus focussed the attention of the people and the Government on the Indians' grievances. Their role in moulding the public opinion as well as in drawing the Indians within the fold of the Congress was no less commendable. They also worked to produce men and material necessitated for the upholding of the national life. Dr. Ishwari Prasad has aptly remarked ; "With all the ridicule to which their methods had been subjected none can withhold the meed of praise from its early leaders (Moderates)—men of high intellectual attainments, character and patriotism—for doing pioneer work in the way of India's regeneration and championing the cause of the people against a powerful, alien bureaucracy strongly entrenched in its own citadel of obstinacy and

*Mr. D E. Wacha was one of the trinity of Parsi political leaders. He never spared himself in the service of his country. He was secretary to the Congress for years and years. He was one of the most constant critics of policy and measures of the Government, and his speeches and writings contain a mine of information. He was one of those who considered it a religious duty not to miss a solitary session of the Congress. He made a vast contribution to the political and economic development of India during the many years of his active life.

prejudice.*' According to K.M. Munshi, if there had not been an all-India organisation functioning for more than thirty years, none of the great movements led by Gandhiji would have any chance of success, nor would it have reached its highest efficiency as a political machine under the dexterous guidance of Sardar Patel.† Obviously, it means that the activities of the early Congressmen were not fruitless. And the Moderates rendered a valuable service to the Indian nationalism by rousing national consciousness, by imparting political education and by creating among Indians the feeling of oneness.

It is sometimes contended that the Moderate nationalists 'barked well but shrank from biting.' Their method of constitutional pressure was not very effective. There is, no doubt, some truth in this contention of the critics. But, at the same time, it cannot be denied that under the circumstances it was the most suitable method of agitation. And it considerably helped the national movement, which went on progressing without any serious opposition from the Government. Besides, it should not be forgotten that the Moderates were faced with an alien bureaucracy, which was as strong in its organisation as it was conservative in its instinct and traditions. It would not have tolerated any other method of agitation.

The British attitude towards the Movement

Dr. R.C. Majumdar holds the view that the British Government and the British people, both at home and in India, with a few honourable exceptions, regarded the Congress as the greatest enemy of the British rule in India and their attitude towards the national movement was, therefore, not at all favourable. The reactions of the bureaucracy during the period 1885 to 1906, writes Dr. Ishwari Prasad, "were first of ridicule and contempt, then of abuse and misapprehension, and lastly apprehension, which motivated repression."

These views of the critics, no doubt, contain a good deal of truth. The attitude of the Government towards the Congress movement was first of sympathy, then of disparagement and lastly of active hostility. Mr. Ramsay MacDonald was frank enough to observe that 'our official attitude has been the chief factor in

*Dr. I. Prasad ; *History of Modern India* : P. 315.

†Munshi K.M. *Advent of Independence* P. viii.

determining the course of the nationalist movement. It has been attitude of friendship at first and bitter opposition later'. A careful survey of the history of the movement during these two decades (1885-1905) also leads to the same inference.

The birth of the Indian National Congress was looked upon with favour by the British authorities in India. Lord Dufferin, the then Governor-General, was pleased over its foundation. He held that this responsible public body would enable the Government to ascertain the real wishes of the people and thus help the bureaucracy in its task of administration. He gave private interviews to a number of delegates, who attended the Congress session at Calcutta in 1886. He also entertained them at a garden party. Besides, a considerable number of Government servants visited Calcutta at the time of the session and privately gave the delegates of their own provinces advice at the time of informal consultations. Some Englishmen of note like Mr. George Yule, Sir William Wedderburn and Sir Henry Cotton even chaired the Congress annual sessions*. All this was, obviously, helpful to the development of the national movement.

The Congress had held hardly a few of its sessions, when the tone of the British authorities in India began to change. Even Lord Dufferin, who had welcomed the foundation of this all-India organisation, became its critic. In his speech at St. Andrews Day Dinner on November 30, 1888, he ridiculed the Congress demand of parliamentary system and described it as the representative of 'a microscopic minority' of India's population. Thereafter, the bureaucracy at all levels in India became unfriendly, if not hostile, to the movement. The Governor of the United Provinces refused to permit the Congress Reception Committee to procure a suitable site at Allahabad for the Congress session in 1888. Two years later the Government of India issued a circular forbidding the attendance of the government servants at the meetings of the Congress. The seven invitation cards, which had been sent to the Lieutenant Governor of Bengal and the members of his household, were also returned.

*Mr. George Yule was the first British President of the Congress. He presided over its fourth session held at Allahabad in 1888. The next session of the Congress was presided over by Sir William Wedderburn. It was held at Bombay. Sir Henry Cotton belonged to the I.C.S. and was the Chief Commissioner of Assam. He presided over the twentieth Session of Congress held at Bombay. He did very useful work for India in London as a moving spirit of the British Committee.

The authorities also adopted some measures to weaken the fast growing influence of the movement. They persuaded the Muslims of N.W.P. to keep themselves aloof from the Congress. They attempted to create division among the educated Hindus. Under the direction of Lord Hamilton, who was the Secretary of State for India for seven years, Lord Curzon's Government even put pressure on the rich and the aristocracy to withdraw their patronage of the Congress.* Anti-Congress elements in the country were favoured with honours and distinctions. But all these measures of the Government could not achieve the desired object. The hostility of the Government rather increased the popularity and influence of the Congress. To quote R.C. Majumdar, "The unholy conspiracy between the British and the Indian authorities against the Congress could not achieve its object, owing to one miscalculation. They did not know that the Indian National Congress derived its strength and support from the middle class and not from the wealthy and the aristocracy".†

SECTION II

PERIOD OF EXTREMIST NATIONALISTS

(1905—1919)

Indian nationalism after 1905 entered a new phase of its career. The Moderates, who hitherto had held the leadership of the national movement, lost their former influence and importance. And the extremist nationalists, with their new ideology and methods, came in the forefront. Their strategy of fighting the Moderates within and foreign imperialism without soon caught the imagination of the young Indians and inspired them with hopes of earlier and surer results. The Government repression to crush such nationalists led to the emergence of a revolutionary cult with its bombs and pistols. Thus, this phase of the movement extending over a span of about fourteen years (1905—1919) was one of Militant Nationalism.

*Lord Hamilton remained consistently suspicious and unsympathetic towards the movement. He made all possible efforts to curb the influence of the Congress. He even accused Lord Dufferin of purchasing popularity by leaving to his successors unpleasant legacies and attributed the origin and development of the Congress to his mismanagement and want of judgement. But, unfortunately, he failed to understand that the formation of the political body like the Congress could not have been delayed. *Singh Hira Lal : Problems and Policies of the British in India ; p, 224.*

†Majumdar R.C. : *History of the Freedom Movement*, P. 414.

RISE OF EXTREMISM

(Causes)

Though rise of extremism in Indian politics synchronised with the fateful regime of Lord Curzon, yet the factors and forces which helped its growth had long been in operation. The emergence of this new creed of Indian nationalism was, therefore, neither sudden nor isolated. It was, on the other hand, the natural development in the process of evolution. The circumstances, which favoured the rise of extremism in Indian politics, may briefly be analysed as under :

(a) *Dissatisfaction with the Methods and achievements of the Moderates*

The achievements of the Indian National Congress during the first twenty years of its career were not very impressive. It held annual sessions, resolved, demonstrated and was forgotten for the rest of the year. The left wing in the Congress grew impatient with the Moderates' methods, as they found them of very little use for the attainment of their political objectives. They openly expressed their dissatisfaction with the policy and programme of constitutional agitation. Lala Lajpat Rai observed : "After more than twenty years of more or less public agitation for concessions and redress of grievances, they had received stones instead of bread".* This dissatisfaction with the methods and achievements of the Moderates tipped the scale in favour of extremism, which promised something strenuous, thorough and challenging to wrest concessions from the government.

(b) *New socio-economic conditions*

The second half of the nineteenth century was marked by a steady increase in the number of schools and colleges run either by the Government, or by the missionaries or by the enlightened Indians. With the increase in the number of educational institutions, the strength of the educated Indians also increased. But there was no corresponding progress in the economic sphere. Hence, the educated class was faced with the problem of unemployment. The industry offered them no avenues ; the over-burdened agriculture provided no scope ; and, above all, the Government made every possible effort to exclude the educated Indians from the Civil Service. This naturally created a feeling of frustration, which too fed

*Lajpat Rai : *Young India*, P. 158.



BAL GANGADHAR TILK
(The Prince of Patriots)

the fire of extreme nationalism. To quote A.R. Desai, "Political discontent born of the economic suffering due to unemployment among the educated middle class was an important factor in the growth of the political current of militant nationalism of which Bal, Lal and Pal were the principal leaders".*

The new industrial class, which arose with the development of commerce and a few industries, was also discontented with the existing conditions. Besides the competition of the foreign capital, they had to fight against commercial discrimination. At every step, they came in conflict with the British industrial interests, which firmly maintained a monopoly of Indian market. Certain lines of handicraft manufactures, especially the finer quality textiles, suffered a serious decline as a result of the British competition. To safeguard their interests, the Indian industrialists and traders clamoured for protection, subsidies, and such like other favourable conditions. But the Government did not bother about their difficulties. This naturally added to the existing discontentment, making way for the rise of new nationalism.)

(c) *Terrible calamities and consequent distress*

During the last quarter of the nineteenth century, there broke out more than sixteen famines in our country. The famine of 1896 was the most intense ever then known under the British rule. It reduced the people to an unknown poverty and also caused a heavy mortality. The bureaucracy, no doubt, expressed their sympathy for the dying Indians but did not take adequate measures to stop the ravages of the famine. They neither fed the hungry nor saved the lives of the starving peasants. The Indians, in consequence, suffered great hardships and died like flies.

To the havoc thus caused by the terrible famine, was added the misery of the bubonic plague, a disease previously unknown to India. The Government was anxious to root it out and took some measures to stop it from spreading but failed to alleviate the sufferings of the people. The plague took a heavy toll of lives and many cities and provinces were devastated. The inhuman conduct of the British soldiers employed to help the plague-stricken people added to the difficulties of the sufferers. According to D.V. Tahmankar, "the British soldiers, because of their rough and ready methods, were dreaded more than the epidemic itself". The experiences of these unhappy years were very bitter but valuable. They made the

*Desai, A R. *Social Background of India Nationalism*, P. 182.

Indians realise the depth of their helplessness. They shook their faith in the constitutional agitation, and made them bold, brave and defiant. This change in their outlook became manifest, when two British Officers (Mr. Rand and Lt. Ayerst) on plague duty were shot dead by the Chaphekar Brothers. These murders marked the dawn of a new phase in nationalism—the phase of extremism.

(d) *Indians' humiliation abroad*

The ill-treatment and humiliation of the Indians in South Africa also favoured the growth of extreme nationalism. The Indians over there were placed under a number of disabilities. They were not allowed to hold land registered in their names. They could not build houses in the areas specified for the Europeans. Their children were debarred from receiving education in the first rate schools. They were not allowed admission in some of the hotels and hospitals. In Natal and Transvaal, they had to submit to the humiliating imposition of three-pound poll tax. Worse still, the Indians were classed as natives and were subjected to discrimination even on railroad carriages, trains and cabs. They could not travel in the first class compartments. They could not walk even on foot-paths. They had to live among 'dung heaps' located outside the towns and they could not remain away from their houses after 9.00 p.m. By the Asiatic Registration Act of 1907 the Indians in Transvaal were required to be registered by finger-prints like criminals on pain of severe penalties. This was, indeed, very distressing. In England, too, the Indians were looked down upon as members of an inferior race. In short, the Indians living beyond the borders of our country were despised as slaves, were denied ordinary human rights and experienced nothing but humiliation. This degradation of the Indians also intensified anti-British feelings and thereby helped the growth of extreme nationalism.

(e) *Influence of the revolutionary doctrines of the West*

Extremism in India drew inspiration also from the revolutionary doctrines of the West. The struggles of independence waged in France, America, Italy and Germany disclosed upon the Indians that those countries had won their freedom not by constitutional agitation. They had to have recourse to force, violence, and rebellions to achieve their object. Even the British, their masters, had to shed the blood of their king to keep their liberty unimpaired. Consequently, the younger element in the Indian political life developed the conviction that it would be a mere foolishness on their part to expect justice or freedom from the British, who had

given no mean troubles to the Irish, their neighbours of the same blood but of different religion. They also realised that the Irish were not fools to shed their blood for what they could achieve by resolutions and deputations. Consequently, the young Indians lost faith in the policy of constitutional agitation and sought the realisation of their goal in imparting an assertive tone to the national movement.

(f) *Enlightened leadership of Bal-Lal-Pal*

The enlightened leadership of Bal, Lal and Pal was the most potent factor, which made for the rise of extreme nationalism. Bal Gangadhar Tilak, the first in the trio, was an ardent patriot with strong convictions. He was neither an admirer of the British rule in India nor did he like the Moderates' fruitless agitation. He was an inveterate foe of the alien bureaucracy and looked upon the British rule as the root cause of all sufferings. He held the belief that *a good foreign government was less desirable than an inferior native government*. So great was his abhorrence for the British rulers of India that he is said to have thus written in one of his articles (June 15, 1917): 'If the thieves break into our home and we have not sufficient strength to drive them out, we should, without hesitation, shut them up and burn them alive.'

Bal Gangadhar Tilak asked his countrymen to be bold, brave and patriotic and face the British repression with courage and determination. He himself never failed to denounce the bureaucracy and its anti-national measures. His powerful speeches and popular slogans, his fearlessness and courage of conviction, his uncommon sufferings and self-sacrifices, taught young Indians the philosophy of defiance and converted them into rebels against the British empire. To quote Dr. Ishwari Prasad: "His teachings, his organisation and methods, his anti-foreign propaganda, his gymnastic clubs, all sowed the seeds of rebellion and found wide acceptance among the people." Indeed, this great Maharashtrian leader, with his own ideas and weapons, infused a new life in the Indian national movement and also brought about a change in its character.

Tilak also utilised the religious institutions and historical traditions for engendering patriotism among the people. But his sacrifices and sufferings for the sake of the mother land proved more effective. They made the Indians believe that the detentions and imprisonments for the national cause meant no dishonour. Rather,

*Dr. Ishwari Prasad : *History of Modern India* P. 348.

such sufferings and sacrifices were a badge of honour and distinction. Blunt rightly observes, 'Tilak contributed more by his life and character than by his speeches or writings to the making of the new nationalism. His selfless patriotism, indomitable courage and fierce determination and, above all, the supreme concentration of his life to one great aim, viz. the freedom of his country, marked a new epoch in the political struggle for India's freedom'.*

Lala Lajpat Rai and Babu Bipin Chander Pal, who rallied round Tilak as his leading lieutenants, also worked for the spread of new nationalism. They bitterly denounced the Moderates' methods and preached the doctrine of self-help and defiance. Their forceful writings and soul-stirring speeches put a new confidence and self assertiveness into the Indians and taught them to shape their own destiny without caring for the frowns or smiles of the alien rulers. In a series of articles published in '*The New India*' Babu Bipin Chander Pal condemned the British scheme of partitioning Bengal as anti national and asked his countrymen not to take it lying down. He also put himself heart and soul in the anti-partition agitation. Lala Lajpat Rai too came forward as a champion of new nationalism and shook the Indians out of lethargy and diffidence. In short, Bal, Lal and Pal, the three eminent leaders of the early twentieth century, struck a new note in Indian politics, and leavened it with a new national spirit.

(g) *Liberation movements in Asia*

The contemporary movements of liberation in Turkey, Egypt and Persia also urged the Indians to make their struggle more vigorous. They stirred up their sense of patriotism and strengthened their will to fight injustice. But the event, which revolutionised their minds the most, was the resounding victory of Japan over Russia, of a dwarf over a giant, of East over West. It shattered the old-time belief in the invulnerability of western might; it symbolised the regeneration of the East; and it gave a new hope to the young Indian nationalists. The greatness of Japan was attributed to the patriotism of her people as also to her freedom from foreign exploitation. As a result of it, the Indians imbibed the idea that India, with her more glorious and more ancient past, could also become a great nation. The victory of Japan thus created a spirit of emulation inspiring the Indians to fight for the freedom

*Blunt W.S. : *India Under Report* P. 27.

and greatness of their mother-land. To quote H. N. Mukerjee, "Interpretation of contemporary events and a reverent resurrection of vanished glory combined to intensify a wide-spread desire to seek escape from foreign domination that had bound India, body and soul".*

(h) *Repressive Policy of Lord Curzon (1898—1905)*

Lord Curzon ruled over India as her Governor-General from 1898 to 1905. His regime, though short but very eventful, proved a blessing in disguise. It gave a fresh impetus to the nationalists activities and their aspirations. The Governor-General, in the pursuit of efficiency (which was the keynote of his administration), trampled upon the feelings of the Indians and thereby called forth all the latent forces of nationalism. He roused a storm of opposition in the country by his such foolish measures as the Official Secrets Act, Calcutta Corporation Act (1899) and the Indian Universities Act of 1904. But the crowning act of his folly was the Partition of Bengal in the teeth of an angry and unanimous opposition. This forced the Indian patriots to plunge themselves into the anti-partition, agitation, which was nothing but a significant phase of new nationalism.

(i) *Partition of Bengal and spread of Extremist Movement*

The Partition of Bengal, which was carried out by Curzon in a most high-handed manner, made a special contribution to the growth of extremism. It fanned the smouldering fire into flames. As soon as the scheme of Partition in its final form was announced, there was an outburst of public indignation. To the Bengalis it appeared that this Partition was a subtle attempt to break up the political unity of their Province, to play off Hindus against Muslims and thus disrupt the new spirit of nationalism. They also felt that they had been insulted, humiliated and tricked. The Bengali-owned newspapers—both English and Bengali—made a tearing and raging campaign against it. A huge protest meeting was held in the Calcutta Town Hall on August 7, 1905 and boycott was adopted as a political weapon to bring pressure upon the Government. This movement soon spread throughout the country. Mass meetings were held in every important town, where Boycott and Swadeshi were openly preached. The 16th of October, the day of the Partition, was observed as a day of

* Mukerjee H.N. : *Indian Struggle For Freedom* P. 85.

national mourning. This wide-spread and unprecedented agitation was, in all intents and purposes, extreme nationalism.

SPLIT IN THE CONGRESS

(The Moderates and the Extremists)

Benaras Session of 1905—Foundation of Extremist Party

The rise of extremism in Indian politics could not but influence the Congress organisation. At its annual session held at Benaras in 1905, a section of nationalists led by Tilak bitterly denounced the Moderates' methods. They prescribed in their place organised Passive Resistance as the only effective means by which the Indians could wrest the control of national life from the grip of the alien bureaucracy.* They also advocated an organised and relentless boycott of British goods and government institutions like schools and colleges.†

The Moderates held the view that all the items of Passive Resistance were more or less impracticable and the demands of their advocates would never be conceded by the Government. On the other hand, they (Moderates) feared that the proposed policy of Passive Resistance might retard the country's political progress. Convinced as such, the Moderates reiterated their faith in the British sense of justice and favoured the continuance of lawful and constitutional agitation. The two sections of the Congress also put different interpretations on their political objective *i.e.* Swaraj. The Moderates took it to mean 'self-government on colonial lines', while their opponents interpreted it as absolute autonomy free from foreign domination.

Some of the arguments put forth by the Moderates in defence of their policy were rational and logical, and, on the face of it, quite unassailable. But they could not satisfy the advanced section of the Indian nationalists, whose standpoint was based on the new

*According to Arabind "The essence of the policy of Passive Resistance was that the Indians should refuse to co-operate with the Government so long as they were not admitted to substantial share and effective control in legislation, finance and administration".

†The extremists advocated the boycott of British goods in order to render the further exploitation of the country impossible. They denounced the existing educational system because of its anti-national character, its calculated poverty and insufficiency, its subordination to Government and the use made of that subordination for the discouragement of patriotism and the inculcation of loyalty.

creed of nationalism. Consequently, there were acrimonious discussions in the Subject Committee, and the Moderates had some very bitter and unexpected experiences. To their utter surprise, even their proposal to send a message of welcome to the Prince of Wales, who was to visit India in the near future, was also opposed. The delegates from Bengal firmly held that Bengal being in tears, they could not receive the Prince with a smiling face. Lala Lajpat Rai took the plea that the forth coming visit of the Crown Prince was a clever device of the bureaucracy to divert the attention of the Indians from their discontent to feasts and functions. Bal Gangadhar Tilak supported Lalaji's views and the delegates from the Punjab, Bengal and Maharashtra all joined in opposing the Moderates' proposals. This clearly indicated that the advanced section of the nationalists, with their new policy and programme, could not be accommodated within the frame-work of the Congress. So after the Congress session was over, these advocates of the new creed of nationalism led by Lokmanaya Tilak held a conference within the Congress campus and formed a new nationalist party, popularly known as Extremists. It decided to remain within the Congress but with a distinct programme of its own.

The Calcutta Session 1906—Trial of strength

After the Benaras session of 1905, the gulf between the Moderates and the Extremists began to widen. The spokesmen of the two parties carried on acrimonious controversy throughout the year and looked forward to a trial of strength in the forthcoming session of the Congress. The Calcutta Congress of 1906, therefore, met in an atmosphere far more tense than that at Benaras a year before. There was a good deal of excitement in the Subject Committee and each of the two parties was keen on having its own President. The contest over the election of the President might have given rise to an ugly situation, if Dadabhai Naoroji, then 82 years old, had not accepted to chair the Congress session. Though Extremists failed to get their own nominee elected as President, yet, much against the time-honoured principles of the Moderates, their resolutions on Boycott, Swadeshi and National Education were successfully adopted. Dr. R.C. Majumdar writes : "It is true that the Nationalists could not carry them in the form in which they desired, but none the less, even the passing of the resolutions as they stood, was a triumph of the Extremist Party"*.

*Majumdar R.C. : *History of the Freedom Movement in India*. P. 208.

also significant in so far as it indicated that Moderates had ceased to enjoy the old respect, reverence and unquestioned obedience.

The Surat Split, 1907

The split that had been averted in 1906 manifested itself with redoubled force in the Surat session, the next year. There was again a trial of strength over the election of the President. The Extremists suggested that Lala Lajpat Rai, who had just been released after deportation, should be elected President. For, it would mark the country's indignation and protest against the unfair treatment accorded to him by the Government. He was, however, not acceptable to the Moderates, who favoured the election of Dr. Rash Behari Ghosh to the presidential office. The situation was saved by the patriotic action of Lala Lajpat Rai who declined to be a pawn in this political game. After the Moderates had succeeded in getting their own nominee elected as the President of the session, they attempted to repudiate the resolutions on Boycott, Swadeshi and National Education, which had been adopted in 1906.* This led to unhappy and melancholy developments. The session broke up amidst scenes of tumult and disorder.

After the unhappy experiences at Surat session, the Moderate Convention decided to have no connection with the Extremists. In their Madras session of 1908, they adopted also a constitution, which closed the doors of the Congress on the new nationalists. Thus, the Congress, for all practical purposes, became a party organisation instead of its being a national institution. The popularity of the Congress began to decline. The average attendance of delegates in the following five sessions did not exceed four hundreds. On two occasions, their number was as low as 243 and 207 as against 1,600 in the two preceding sessions (at Calcutta and Surat). Besides, neither the public nor the Government attached much importance to the deliberations, which were held at the Congress sessions. Though the Moderates continued to control the Congress Party machine for the next about nine years, yet the central figures in the Indian politics were the Extremist leaders. For, the people found in them the expression of their feelings and aspirations.

*This move of the Moderates was inspired by the fact that they did not want to launch any agitation against the Government, which was then negotiating with them for reforms in the councils.

SECTION III

THE TERRORIST AND REVOLUTIONARY MOVEMENT

Immediately after the Surat Congress, the Government adopted the policy of repression to check the fast growing agitation. It imposed stringent restrictions on the activities of the Indians. This led to the emergence of a revolutionary movement, which has been described as terrorist and anarchical in official reports.* Our British administrators denounced the leaders of this movement as dacoits, terrorists and anarchists, but this attitude of theirs was least justifiable. There was, no doubt, an element of terror in their methods, yet they had no plan to spread anarchy and disorder. Nor did they work for a state of anarchy leading to chaos and confusion as was the case with the Russian nihilists. It would, therefore, be a perversity of truth to dub them as nihilists. Besides, even those, who did not appreciate their cult of bomb and pistol, found it difficult to withhold the praise for their burning sense of patriotism.* When on July 1, 1909, Madanlal Dhingra shot Sir Curzon Wylie dead, Lloyd George expressed to Winston Churchill his highest admiration of Dhingra's attitude as a patriot. Churchill shared the same views and quoted with admiration Dhingra's last words as the finest ever made in the name of patriotism. They compared Dhingra with Plutarch's immortal heroes. The Irish were even more appreciative*. The revolutionaries were, in fact, true patriots, exceptionally bold in their policy, programme and designs. They had in them also a deep sense of self-sacrifice.

Object and methods of the revolutionaries

The revolutionaries had great dislike for the foreign government, foreign civilisation and foreign language. They wished to uproot the British rule from India. To achieve this object, they created a revolutionary spirit in the country so that the people might strike at the opportune moment. They also murdered the obnoxious officials to paralyse the machinery of the Government. They openly preached sedition, disloyalty and even revolution against the British Government. They asked the Indian soldiers to help them in their task of insurrection. Their courage and self-sacrificing spirit were simply remarkable. It could not but inspire hundreds of others. The revolutionaries organised a number of societies (modelled upon the Russian and Italian secret societies) for planning and executing the act of terrorism. According to G.N. Singh, "These

*Majumdar, R. C. *History of Freedom Movement Vol. III* P. 178.

secret societies trained the young recruits in physical exercises, use of weapons and religious practices of *Shakti* cult. The weapons for them were obtained in different ways... by manufacturing bombs, by stealing fire arms, by purchasing them from foreign lands and smuggling them into the country".* The revolutionaries on being arrested were often sentenced to death, exile or life-long imprisonment, which they gladly underwent for the sake of their motherland. The chief centres of their activities were Bengal, Punjab, Maharashtra etc.

Revolutionary Movement in Bengal

Revised

The high priests of this cult of bomb and pistol in Bengal were Barindra Kumar Ghose and Bhupindra Nath† Dutt. Both these youngmen, through the well known organs *Yugantar* and *Sandhya* bitterly condemned the foreign government and propagated in favour of revolution. Barindra Nath Ghose also established a revolutionary society named *Anusilan Samiti*, which soon spread its branches all over the province. Its chief centres were, however, in Calcutta and Dacca. According to Sedition Committee report 'the *Anusilan* was active from Dinajpur in the north-west to Chittagong in the south-east and from Cooch Behar in the north-east to Midnapur in the south-west. In big cities and towns, there were many other revolutionary organisations like '*Yugantar Group*', '*Sarswati Samiti*', '*Jamangal Samiti*', '*East-club*' etc. These *Samities* were mostly organised on individual basis and had one chief man as its motive force. The members of *Samiti* bore an unflinching fidelity for their leader and carried out his orders without any hesitation.

The wrath of the revolutionaries fell upon the obnoxious officials. They also killed a large number of informers of the police. In November 1908, an attempt was made on the life of Sir Andrew Frazer, the Lt. Governor of Bengal. Shortly after Mr. Allen, the District Magistrate of Dacca was shot in the back. In 1908, a bomb intended for Mr. Kingsford, the notorious judge of Muzaffarpur, misfired and killed Miss and Mrs. Kennedy. Many police officers and their helpers were also shot dead or murdered in various

*Singh, G. W. : *Landmarks in Indian Constitutional and National Development* P. 235.

†The former was the brother of Arbinda Ghose and the latter of Swami Vivekanand.

parts of the province. It was not easy to ascertain definitely the particular organization of the revolutionaries, which was responsible for murdering any official.

The Government took very prompt and drastic measures to crush the revolutionaries. The two well-known revolutionary leaders of Bengal viz., Prafulla Chaki and Khudiram Bose, were charged with the killing of Miss and Mrs. Kennedy. The former shot himself dead before his arrest, while Khudiram was later on tried and hanged. A number of conspiracy cases like Dacca conspiracy case, Barisal conspiracy case, Manicktolle Bomb Makers case, etc. etc. were instituted against the revolutionaries and the special tribunals awarded them deterrent punishments. The revolutionaries killed many police officials and their helpers in retaliation.

Revolutionary Movement in Punjab

The leader of the revolutionary movement in the Punjab was S. Ajit Singh, the uncle of S. Bhagat Singh. He was not only a true patriot but was also a very good organiser. With the help of his brothers, S. Kishan Singh and S. Sawarn Singh and many a friend (Mehta Nand Kishore, Lala Pindi Das, Lal Chand Falak, Sufi Amba Prasad, Lala Bankey Dayal ect.) he organised a society known as *Anjman-i-Muhiban-i-Watan*.^{*} It was popularly known as 'Bharat mata.' Its members had a deep sense of patriotism. They felt grievously injured by the Partition of Bengal. The reactionary policy of the Punjab Government and its Colonization Bill added fuel to the fire. S. Ajit Singh and his friends then launched an agitation against the Punjab Government and also distributed a number of revolutionary publications. The peasants took a pledge of not paying the revenue and there broke out riots in Lahore and Rawalpindi. Sir Denial Ibbetson, the Lt. Governor of Punjab, grew nervous. He wrote to the Viceroy and the Secretary of State that, if immediately drastic steps were not taken, the events of 1857 would be repeated. The situation was getting out of control". The Punjab Government, thereupon, arrested S. Ajit Singh and sentenced Pindi Dass to five years imprisonment.* On release from the

^{*}Lala Pindi Das, a resident of Gujranwala, was a man of iron will, resolute mind and grim determination. He started a weekly called '*India*'. A special feature of this paper was a series of articles called '*Shiv Shambhoo ka Chittha*' Letters of 'Shiv Shambhoo' this being the penname of L. Pindi Dass. These letters of Pindi Das were full of pungent and spicy, sweet and tasty, humorous and witting, thrusts and sallies on the misdeeds of officials and their reactionary policy. These became the rage of the day and people loved to read these with zest and avidity.

prison, S. Ajit Singh and Amba Prasad ran to Iran and continued to work for India in Europe ; while their other friends carried on their revolutionary propaganda in the Punjab. Dr. Satya Pal writes : "S. Ajit Singh, Sufi Amba Prasad, Lala Pindi Das and Lal Chand Falak did the same service to the Punjab as Bankim Chander Chatterji and other writers to Bengal to make it stand up right." According to official view, the Arya Samaj was chiefly responsible for sedition in the Punjab, but the Samaj publicly disowned its connection with any political agitation.

Revolutionary Movement in Maharashtra

The revolutionary movement in Maharashtra was led by Chaphakar brothers, Shyamji Krishna Verma and the Savarkar brothers. Vir Savarkar laid the foundation of *Abhinava Bharat*, the well known revolutionary association of Nasik, which soon spread its branches all over Maharashtra. According to R.C. Majumdar there was hardly a college or a higher educational institution in Bombay and Poona, which did not have one secret society or a branch of *Abhinava Bharat*. These secret societies spread revolutionary ideas among the people and also inspired them to sacrifice their all at the altar of their motherland. During the days of *Swadeshi* movement, the revolutionaries of Maharashtra displayed an unusual patriotism, which could not but create a stir in the whole of the Deccan. In December, 1909, one of the revolutionaries named Anant Lakshman Kanhera killed Mr. Jackson, the District Magistrate of Nasik. This official had committed Ganesh Savarkar to trial for writing national songs and poems. The activities of the revolutionaries also included collection of, and training in arms and explosives. Some of their societies even set up factories at Nasik, Poona, Bombay and at many other places for manufacturing bombs and bomb-material. In short, Maharashtra remained a very active centre of the revolutionary activities for a number of years.

Revolutionary Movement in Madras : Rajasthan etc.

The revolutionary activities, though not of a very organised character, made appearance also in Madras, Rajasthan and Benaras. On March 13, 1908 a serious riot broke out in Tinnevely. Many public buildings were attacked and partially burnt. The furniture and official records were set on fire. Revolutionary ideas were preached at public meetings and a secret association was

organised by Nilakanti Brahmachari. On June 17, 1911 the District Magistrate of Tinnevely was shot at in a railway carriage. The revolutionaries of Rajasthan carried on their activities under the leadership of Arjun Lal Seth, Bharat Keshari Singh and Rao Gopal Singh. Benaras also for a time remained a big centre of Sachinder Sanyal's the revolutionary organisation.

Revolutionary activities outside India (1907-14)

The Indian revolutionaries carried on their activities even in England, America, and Canada. Shyamji Krishana Verma established the *Indian Home Rule Society* in London and also issued its organ the *Indian Sociologist*. This society soon became a centre of the revolutionaries, among whom the most prominent were Vinayak Savarkar, Shyamji Verma and Madan Lal Dhingra. They managed to send some foreign weapons to the revolutionaries of Maharashtra and also provided the Indians with literature which could promote the spread of revolutionary ideas and ideals. In July, 1909, Madan Lal Dhingra shot dead Sir Curzon Wylie by way of vengeance for the heavy sentences of transportation and death passed by British courts on the patriotic Indians.

A revolutionary organisation under the name of 'Ghadar Party' was founded in America through the inspiration of L. Hardy, a genius young man of the Panjab. The aim of this party was to liberate India from the British yoke through an armed insurrection. As a result of the efforts of Lala Hardy and Bhai Parmanand, the Party issued its organ *the Ghadar* and established its branches even outside America : in Shanghai, HongKong, Philippines, Siam, Panama etc. etc. The important Indian patriots associated with the Ghadar Party in America were : Kartar Singh Sarabha, Pt. Jagat Ram Haryanvi, Babu Tarak Nath, V.G. Pingley, Baba Jawala Singh, Bhai Sobha Singh, Baba Arur Singh etc. The leading men of the Ghadar Party in the countries other than America were : Gayani Bhagwan Singh, Hafiz Abdulla, Chet Ram, Jiwan Singh and Baba Sohan Singh Bhakna. Through the efforts of these patriots the Ghadar Party gained strength everywhere and its paper began to have a sale of ten lakhs a week. Though Lala Hardy had to leave for Switzerland, yet the Ghadar Party founded by him continued its activities with unabated zeal.

Government Policy of Repression, Reform and Division

The outburst of revolutionary activities greatly alarmed the British Government. It, thereupon, adopted a three-fold policy of

repression, reform and division to meet the situation. A series of stringent Acts viz. Prevention of Seditious Meetings Act, 1907, the Explosive Substances Act, 1908, the Newspapers (Incitement to Offences) Act, 1908 etc. etc. were passed within a couple of years. Some of them were even extended and made more comprehensive in scope. Besides, Lala Lajpat Rai and Ajit Singh were deported. In 1908, Krishan Kumar Mittra, Aswini Kumar Dutt, Shayam Sundra Chakarvarti, Sabodh Chandra and five others were chosen for the honour of detention without trial. For his two articles in *the Kesari* in connection with the bomb incident of Muzaffarpur, Tilak was sentenced to six years imprisonment. These repressive measures of the Government could not root out the terrorist activities. They, however, went underground for a time.

In its efforts to win over the Moderates to its own side, the Government offered the Reforms of 1909. But they, too, failed to achieve their object. Even Gopal Krishna Gokhale, the leader of the Moderates, expressed dissatisfaction with the political concessions offered to the Indians. The British, however, succeeded in creating a division between the Hindus and the Muslims. By conceding the Muslims' demand of communal electorates, they made them their allies against the Hindus. But the British success in this respect also proved short-lived. The developments, at home and abroad soon weakened the Anglo-Muslim friendship thus paving the way for a closer alliance between the Congress and the Muslim League in the following years.

First Great War and Revolutionary Movement

The outbreak of war between England and Germany was hailed with delight by the Indian revolutionaries living abroad. They looked upon it as a golden opportunity for the realisation of their political ambitions. Some of them planned to secure German help for a general rising against the British in India. The German Government, anxious to utilise the revolutionary activities of the Indians against the British, assured its support. This led to the foundation of the *Indian Independence Committee* in Berlin, which established its contacts with the revolutionaries in U. S. A. through the German Embassy in that country. The *Berlin Committee* and *Ghadar Party* in U. S. A. decided to carry on the revolutionary work jointly. They also planned to send more money to India to help the Indian revolutionaries.

In August 1914, the Ghadarites were directed by their party to go back to India in thousands to liberate their motherland from

the British yoke, in co-operation with their countrymen already engaged in the work. This direction of the Party found ready response from Indian settlers in all parts of the world. About three thousand men reached India in different batches, at different times and through different routes. Of all the ship-loads of returning emigrants the *Tosa Maru* was reported to be the most dangerous. It arrived at Calcutta with 173 passengers, mostly Sikhs, from America, Manila, Shanghai and HongKong. The Government took very speedy measures and arrested most of them just on landing on the Indian soil. Their leaders : Sohan Singh Bhakana, Kesar Singh and Jawala Singh were also interned, though they did not come out of their ship. In spite of strict screening by the Government officials, hundreds of Ghadarites managed to reach India safe and sound. Prominent among them were : Kartar Singh Sarabha, V. G. Pingley, Pt. Jagat Ram, Kashi Ram, Prithvi Singh and Jagat Singh. This happening created a great stir in the country, and strengthened among Indians the anti-British feeling.

In January, 1914 a rich Indian contractor of Singapore named Gurdit Singh hired a Japanese steamer, the *Komagata Maru*, for conveyance of Punjabis to Canada. With 376 passengers in it, this ship arrived at Vancouver in May, 1914. The Canadian Government did not allow the passengers of this ship to land, as they did not fulfil the conditions laid down by the regulations of the Dominion. When Gurdit Singh asked for permission to seek legal advice, it was likewise denied. After remaining for about two months in Canadian waters, the ship left Vancouver on her homeward voyage. To the much indignation of the Indian passengers, they were not allowed to land at Singapore. Even Gurdit Singh, who had business interest in this city, was compelled to run to India. On their arrival at Calcutta, they found the attitude of the Indian Government more unfavourable. This led to clashes between the returning emigrants and the police force. Fifteen passengers and three policemen were killed and some of the British officials were wounded. This episode fanned the anti-British feelings both in and outside India.

Amidst these happenings of unusual and unbearable nature, the Indian revolutionaries planned to rise in revolt against the British Government on February 21, 1915. They also had the co-operation of the military forces of four provinces. To their utter misfortune, one Kirpal Singh betrayed their confidence and informed the police. This was followed by police raids and arrests. Many

cases were instituted against the revolutionaries. In Lahore Conspiracy case, 66 persons, including Bhai Parmanand, were arrested. S. Kartar Singh Sarabha, V. G. Pingley, Sewa Singh, Vir Singh and some other patriots were sentenced to death. S. Kartar Singh Sarabha was then only eighteen years old. On being questioned by the court, he frankly declared: "I stand for armed revolution in India and have come here for this purpose. I shall find myself fortunate if I am sentenced to death, because according to the theory of reincarnation I will like to be reborn in India to work for her freedom."

Some revolutionaries like Amir Chand and Rash Bihari along with Dinanath, Avadh Bihari, Balmukand and Basant Kumar Biswas, formed a revolutionary society linking it with Bengal revolutionary movement. A bomb was thrown at Lord Hardinge, and revolutionary leaflets were distributed among the people. These revolutionary leaders also placed a bomb in Lawrence Garden at Lahore. Amir Chand, Avadh Bihari, Balmukand and Basant Kumar were hanged for these offences.

Failure of the Revolutionary Movement

The revolutionary movement in India ultimately failed. Its failure was due to various causes. It was not organised on a country-wide basis. It appealed to a very small circle of youngmen. The attitude of the Indian leaders like Surendranath Banerjee, Gokhale and Ashutosh was not favourable. Rather, they asked the Government to take stern measures against these disturbers of peace. Mahatma Gandhi was then actively helping the Government in their war efforts. The British security system proved to be efficient and local police did not give the revolutionary workers the much-needed co-operation. The native Darbars were also hostile to the movement. Some of them actively co-operated with the British authorities in the suppression of seditious attempts.

SECTION IV

FIRST GREAT WAR AND INDIAN POLITICS

The First Great War had a profound effect on the Indian national movement. It not only gave a new meaning and urgency to the Congress demand for Swaraj but also made the Indians realise its importance. The Indians at large had grown accustomed to the foreign rule. Even political leaders like Sir Pherozeshah Mehta, Pandit Madan Mohan Malaviya, Sir Surendranath Bannerjee and

INDIAN NATIONAL MOVEMENT

Mudholkar were more conscious of the benefits of the British rule than its harmful effects. The experiences in the war completely changed their outlook. The readiness of the British to sacrifice their all for saving their country from the impending German domination could not but make the Indians realise the depth of their own degradation. This, made them also enthusiastic for national freedom.

During the war years the leading statesmen of England and America repeatedly declared in no uncertain terms that they were waging the war in defence of democracy and freedom. They also promised the right of self-determination to every nation. Their solemn declarations did not fall flat on the national leaders. They found in them a claim as well as an inspiration. While participating in the war conferences, Tilak never failed to base India's claim to political reforms on these declarations. He even linked the issue of Swaraj with the question of war-aid. To his still greater credit, he demanded also that Indians must be given equality of status with the British in the Army, Defence Forces and Reserved Forces. In view of these new stirrings and new attitudes, the British Government felt the need of surveying the Indian problem from a new angle of vision. The war thus proved a great leap forward in India's march to national freedom.

The war provoked a revolution in the Indian consciousness. It made them optimistic about the future. It also developed in them a new sense of self-esteem. In the words of Dr. Ishwari Prasad, "The success of the Indian armies on European battle-fronts, the successful termination of war, the oft-repeated war-time slogans of self-determination and equality, all gave birth to a new sense of national pride and new hopes of constitutional reforms". Bal Gangadhar Tilak voiced the national feeling, when he said : "We will remain in the Empire only as equals. We will not live in the Empire merely as servants and load carriers. India has now realised her strength and characterThe Indian people are now fully alive to their status and destiny. If the Japanese, who are Asians like the Indians, can enjoy the liberties and responsibilities of Swaraj, why cannot we ?"

The loyalty with which India responded to Britain in this hour of need gave an added justification to her demand for constitutional concessions. Her troops fought in France, Belgium, Egypt, the Sudan, East Africa, North China, Persia, Mesopotamia, Aden

etc. etc. She bore the heavy expenditure of maintaining a large army to fight for Britain. She also offered a huge free gift of one hundred million sterlings to Britain for conducting imperial war. Her supply in men, money and material was so large that the Viceroy, Lord Hardinge, declared in the House of Commons (and repeated it in his autobiography) that India had been 'bled white' by the War Office. It was, therefore, natural as well as reasonable for India to expect some recognition of her war-efforts. The Indian National Congress twice resolved that "in view of the profound and avowed loyalty that the people of India have manifested in the present crisis, the time has arrived to introduce further and substantial measures of reforms towards the attainment of Self-Government".

SECTION V

CONGRESS-LEAGUE ALLIANCE AND LUCKNOW PACT (December, 29, 1916)

The outbreak of world war could not but influence the Indian politics. The Muslim League annoyed by Britain's inimical attitude towards Turkey, turned to the Congress. The progressive youngmen of the League were already drawing closer to this national organisation. The arrests and detentions of some eminent nationalist Muslims for their Pro-Turkish activities made the situation more favourable. The bond of alliance between the League and the Congress was cemented further by the holding the annual sessions simultaneously at Bombay in 1915. Many prominent Congress leaders like Mahatma Gandhi, Sarojini Naidu and Pandit Madan Mohan Malaviya attended the League's deliberations. A committee to prepare a scheme for India in consultation with the Congress was appointed. This committee submitted its report at the joint session of the Congress and the League at Lucknow in 1916 and provided the basis of what is known as Lucknow Pact of 1916.

The conclusion of the Lucknow Pact electrified India for a while. It recognised separate constituencies for the Muslims and fixed the number of seats for them both in the Provincial and Imperial Legislative Councils. The Muslim League, on its part, promised to support the Congress demand for self-government.

Comments

The Lucknow Pact was hailed for establishing the Hindu-Muslim unity on a solid foundation. It was looked upon as the most striking expression of Indian nationalism. Tilak's well-known "*Paper The 'Kesari'*" wrote : "Friday, 29th December, 1916 is a

day worthy to be written in golden words". But all these praises could not conceal the hard fact that the Pact was a victory of the Muslim communalism without a qualification. To bring round the Congress, which had been bitterly condemning the separate electorates since 1906, to their point of view was no mean an achievement of the Muslim Leaguers. Dr. R. C. Majumdar writes: "The communal electorates stank into the nostrils of these leaders in 1909 and evoked from them fierce denunciation against the British for the insidious poison they had administered into the Indian body politic. But now they swallowed the poison even in greater doses, and committed political *Hara-Kiri*... The Congress leaders gambled their whole fortune on one stake, and sacrificed the future for immediate gain. No one can doubt, in the light of the subsequent events, that the Congress action in 1916 well and truly laid the foundations of Pakistan which came into existence thirty years later"*

It was, indeed, unfortunate that even after having obtained so generous terms, the Muslims of India remained discontented. They soon began to cry for more concessions. The British Government refused to accept the Pact on the plea that it provided far more political concessions to the Muslims than they actually deserved. The Congress, as was obvious, paid a very heavy price to achieve national unity. With all that is said against the Pact, its immediate effects were quite encouraging. It established for a time the Hindu-Muslim unity, which lent the much-needed strength to the movement. As a result of it, the British Government had to make on August 20, 1917 an historic declaration stating their post-war policy towards India. More than that, the Lucknow Pact seemed to deprive the Government of the trump card they had in their hands to stem the progress of Indian nationalism.

Reunion of the Moderates and the Extremists

Ever since the Surat Split in 1907, the desire to bring about a unity between the Moderates and Extremists had always been present in the country. Sir William Wedderburn and some other nationalists had made sincere efforts in that direction but nothing had been achieved. The Moderate leaders, who controlled the Congress organisation were uncompromising. The release of Tilak (after six years) in June 1914 brought the question of reunion of the Congress wings again to the fore-front. Mrs. Annie Besant and Subba Rao took up the matter in right earnest. The deaths of Ferozeshah

*Majumdar R.C. : *History of the Freedom Movement India* P. 533.

Mehta and Gopal Krishana Gokhale, who were opposed to the union, in 1915, brightened the prospects. Hence, at the Congress session of Lucknow in 1916, the Extremists were admitted to the Indian National Congress after nine years. This was no doubt a development for the better.

SECTION VI

HOME RULE MOVEMENT

Annie Besant and Madras League

In the year preceding the Lucknow Pact of 1916, Mrs. Annie Besant (an Irish lady, who had settled in India since 1893) had conceived the idea of starting Home Rule movement in India on the Irish model. In her paper *New India*, she had made a formal announcement about the founding of the Home Rule League in the near future. It was formally inaugurated at Madras in September, 1916. After she had laid the foundation of the Madras League, she set up its branches at Bombay, Kanpur, Allahabad, Benaras, Mathura, Calicut, etc. and started propaganda in favour of the movement through her two organs viz., *New India* and *Commonweal*. She also made extensive tours, delivered stirring addresses and distributed huge quantities of propaganda literature. She explained to the people that her Home Rule meant a form of government (within the British Empire) in which the rule of bureaucracy was to be replaced by an administration responsible to the people. Her superb oratory and matchless literary gifts enabled her to reach the foremost rank in politics in an incredibly short time. Even the Moderates, who detested her most, writes C. Y. Chintamani, admitted that "she had stirred the country by the spoken as well as written word as scarcely anybody else could do."*

Lokmanya Tilak and Poona League

Bal Gangadhar Tilak soon took up the idea of Home Rule League. He summoned a conference of the nationalists of Bombay, Central Provinces and Berar at Poona and then with their co-operation established the Indian Home Rule League on December 28, 1916. Its object was also to attain Home Rule or self-government within the British empire by all constitutional means and to educate and organise public opinion in the country towards the attainment of the same. Mr. Joseph Baptista and Mr. N. C. Kelkar were elected its President and Secretary respectively.

*Chintamani, C Y. : *Indian Politics since Mutiny*. P. 102.

Tilak himself did not accept any office.

Soon after the foundation of the Indian Home Rule League, Bal Gangadhar Tilak undertook an extensive lecturing tour. He explained to the masses the object of the movement and exhorted them to become members of his League. His homely speeches and direct appeals not only brought home the idea of self-government to the people but also made him a hero of the masses. Dr. R.C. Majumdar writes : "He earned the epithet of *Lokmanya* and was almost worshipped as a god. Wherever he went, he received a right royal reception".

Joint Efforts of Tilak and Besant

Though there were two Home Rule Leagues in the country (one of Besant and the other of Tilak), yet they acted in close co-operation. In consequence, the Home Rule agitation made a rapid progress. At the end of the first year, Tilak's League alone had 14,000 members and a subscription of Rs. 16,000. The wrath of the Government soon fell upon the leaders of the movement. A case was instituted against *Lokmanya* Tilak, who was subsequently ordered to furnish a personal bond of Rs. 20,000 with two securities of Rs. 10,000 each. A security of Rs. 2,000 was demanded from *New India*, the daily paper of Mrs. Besant. These pin-pricks by the Government, however, could not cripple the activities of either Tilak or Mrs. Besant. Both of them continued their propaganda work with redoubled vigour. The unwearied activities of these zealous leaders carried the idea of Home Rule far and wide and made it practically the only live issue in Indian politics.' The movement had also its repercussions on the Indian National Congress, which drew from it added popularity and strength.

After the conclusion of the Congress session of 1916, Tilak and Besant visited many parts of India. They were everywhere received with love and enthusiasm. Many a political leader, who still held affiliations to the Moderate Party, joined the nationalists in welcoming them. These visits of the Home Rule leaders met with a great success and were referred to in the police reports as 'triumphant tours'. Mrs. Annie Besant's internment in 1917 made the movement more popular and also provoked a strong criticism in foreign countries including even Britain. It was, indeed, a matter of great surprise that prominent Muslim leaders like Jinnah, and the family of Muhammad Ali also joined the Home Rule movement.

Significance of the Movement

The Home Rule movement marked the beginning of a new phase in India's struggle for freedom. It placed before our countrymen a concrete scheme of self-government. It also pointed out that, if the Congress really wanted to achieve its goal, it must cease to be a club of arm-chair politicians taking to public work only to the extent to which their leisure permitted them ; instead it should be guided by leaders, who were prepared to place their whole time and energy at the service of their mother country. This new ideal of political leadership found favour with the country and helped to develop a new standard of public life. The movement also revealed that the entire national resources must be pooled together to attain national freedom and all national efforts should be geared to this one specific purpose.

The Home Rule movement was also significant in so far as it ousted the Moderates from the Indian political field. It also showed Tilak at his best—a sincere, fearless, unbending patriot, who could fight for his country with an uncommon zeal, without caring for the favours or frowns either of the people or of the Government. Besides, the Home Rule movement made the Indians bold and fearless. This is evident from the fact that in 1917 thousands of persons, including men of light and learning, pledged themselves to stand by the League, if it was declared illegal. Lastly, the popularity and strength of the movement could not but influence the policy of the Government towards the Indian problem.

The appeal of the Home Rule movement extended beyond the frontiers of our country. It impressed the eminent Americans and Englishmen, who eloquently wrote and spoke for the grant of self-government to India. A committee of the members of Parliament was formed in London for the purpose of pressing forward the claim of India to self-government. The Labour Party conference at Nottingham unanimously passed a resolution in favour of Home Rule for India.

Montagu's Declaration and Montford Reforms (1917—1919)

The declarations of war aims, the outburst of terrorist activities and the growing solidarity of the Indian nation had created a very critical situation. The Government had tried many repressive measures but they all had failed to yield any result. The whole country was seething with discontent and disaffection. There was also a spirit of open defiance among the people. To make matters

worse, the fortunes of war were steadily going against the British. Under these unfavourable circumstances, the British authorities decided to placate the Indians by granting a further instalment of reforms. Hence, Mr. Montagu, the Secretary of State for India, in his historic Declaration of August, 1917, offered British pledge of ultimate self-government for India. In pursuance of his Declaration, Mr. Montagu came to India and in the company of the Viceroy, Lord Chelmsford, toured the whole country. After ascertaining the Indian public opinion, they made their report, which was known as the Montagu-Chelmsford Report. On the basis of this report the British Parliament passed the Government of India Act, 1919, giving effect to the policy contained in the Declaration of August 20, 1917.

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CHAPTER 17

Indian National Movement

THE GANDHIAN ERA

The First Great War was followed by a new epoch in Indian history popularly known as Gandhian era. This period dating roughly from 1920 to 1947 was marked by many a significant development culminating into the liberation of India. During these twenty seven years of our national life Gandhiji dominated the Indian politics. He was the supreme leader of the Indian national movement, which made a rapid progress under his able guidance and care.

The emergence of Gandhiji as the leader of the movement in 1920 was timely and propitious. At that time the national movement was devoid of imaginative thought or leadership. Gopal Krishana Gokhale had died much earlier. Tilak, who could have given the lead, also died in July, 1920. Lala Lajpat Rai, though a leftist, was essentially moderate and constitutional. Terrorism and constitutionalism, the two recognised methods of political action, offered no hope of success. A dominating personality, with a new technique of political warfare, was the need of the hour. At this critical moment came Mahatma Gandhi, the illustrious son of India, who guided the thoughts, aspirations and activities of our nation till the end of his life in 1948.

Gandhiji made an everlasting contribution to the cause of national freedom. He transformed the latent energy of the people into strenuous political activity. He developed the Indian National Congress into a fighting machine and a revolutionary organisation; non-violent in character but of tremendous strength and potentiality. His new strategy of political warfare (*Satyagraha*) galvanised the millions of Indians into action against the British *Raj* and baffled the imperial might of Britain. Apart from that, he gave depth and substance to India's cause, and he won for it world-wide attention and sympathy. He sought to win independence for India, not only in political but also in spiritual sense. He gave a moral and spiritual standing to India's revolution. His efforts were at last crowned with success and India achieved independence in 1947.

SECTION I

TOWARDS NON-CO-OPERATION MOVEMENT



Soon after his entrance into the Indian politics, Gandhiji was forced to launch his well tried non-co-operation movement. The factors and forces, which urged him to adopt this programme or policy may be analysed as under :

Dissatisfaction with the Reforms of 1919

The Montford Reforms of 1919 failed to satisfy the Indian aspirations. Except a small section of the Moderate nationalists, all other Congressmen bitterly denounced them. The Indian National Congress at its annual session held at Amritsar described them as 'inadequate, unsatisfactory and disappointing.' The main cause of dissatisfaction was that their unconditional support to the British cause in the war was not suitably rewarded. The concessions offered to them through the Montford Reforms were much below their expectations. They felt that India had been tricked into giving support to Britain's war by spcious and empty promises. For the British statesmen, in spite of their high sounding praises for the Indians' loyalty, service and sacrifices, were now unwilling to fulfil their pledges and promises. This attitude of the authorities could not but stir the Indian leaders hatred and indignation. It also developed in them a deep sense of frustration.

Rowlatt Bills

In this atmosphere surcharged with passion and excitement, the bureaucracy should have acted with sympathy and moderation. But



much to its discredit, it still adhered to the policy of reform and repression. On the recommendation of the Sedition Committee, instituted under justice Rowlatt in 1918, it introduced the Criminal Law Amendment Bills in the Viceroy's Council. These Bills (widely known as Rowlatt Bills after the name of justice Rowlatt) were intended to arm the executive with sweeping powers of preventive detention or enforced residence as regards all suspected political agitators. On the basis of these powers (which were quite comprehensive) the bureaucracy could suppress all kinds of agitation ; it could corner the national leaders, and also deprive the Indians of their civil liberty. Worse still, any person held under the provisions of these Bills had no right to "*Appeal, Vakil and Dalil* (argument)."

Opposition of Rowlatt Bills—Emergence of Gandhi as leader of India

The Bills were received with dismay and indignation by every section of Indian public opinion. They were condemned by the Congress as measures of renewed repression and unwarranted restrictions. The Indians, who had fought the Great War for freedom, self-determination and liberty, saw in these Bills the denial of those very principles. Even those, who were in favour of accepting the reforms, did not like the Bills. They held the view that they (the British) 'were giving with one hand and slapping down with the other.' An intense agitation seemed imminent. Mahatma Gandhi responded with a direct challenge. He requested the Viceroy to withhold his assent to the 'Black Bills', as he called them. When his appeal failed to yield any result, he formed a Satyagraha Society, whose members were pledged to disobey the law as a symbol of passive resistance. To galvanize the mass support for this act of defiance, he proclaimed 6 April *Satyagraha Day*, a day of *hartal*, a day of fasting, a day of mass meetings to protest against the hated legislation. Gandhiji's appeal for *hartal* met with a phenomenal response. On the appointed day, all work came to a stand still and the country observed an unprecedented *hartal*. In all the towns, all means of communication were suspended. Even in the countryside the peasant put away his plough.

The 6th April-Delhi demonstration was a momentous one. An unprecedented scene of Hindu-Muslim unity was witness there. People of both the communities jointly faced the bullets. The

* Prasad Dr. Ishwari : *History of Modern India* P. 396.

leader of the mammoth procession, Swami Shradhanand came forward and offered himself as a target for the bullets. The Muslims were so touched by this gesture of patriotic self-sacrifice that they, in their enthusiasm, carried the Swami aloft to Jama Masjid and asked him to speak from there.* (The *hartal* was indeed, a unique success and it marked out Gandhiji as the all India leader. Some untoward incidents, however, took place in Delhi, the Punjab, Ahmedabad and other places. The news of these disturbances greatly worried Gandhiji. He immediately left for Delhi, but was arrested at Palwal and taken to some unknown place. *Jallianwala Tragedy April 13, 1919*)

Gandhiji's arrest was followed by wide-spread disturbances in the country. Some cities of the Punjab like Gujranwala, Kasur and Lahore also witnessed ugly scenes of disorder. In view of this fast deteriorating situation, the Deputy Commissioner of Amritsar summoned Drs. Satyapal and Kitchlew to his bungalow on April 10 1919 and then suddenly arrested them with the help of European officers. As word drifted through the bazaars of the city, a crowd gathered quickly and proceeded to the house of the Deputy Commissioner to plead for the release of their beloved leaders. On the way, they were stopped by a military force at a point known as Hall Gate Bridge (now Bhandari Bridge). This led to a skirmish and indiscriminate firing, which resulted in the deaths of a few demonstrators. Infuriated by the sight of their dead and wounded comrades, the crowd indulged in acts of violence, murder and arson. Five Europeans, including a woman named Sherwood, were killed. Two banks, the Town Hall, the telephone exchange and several other buildings were attacked and burnt. To worsen the situation, the command of the city was given over to General Dyer, Officer Commanding of Jullundur Division, with instructions to "take whatever steps he considered necessary to re-establish civil control".

By some curious process of reasoning General Dyer believed that it was expected of him to distinguish himself by the signal act of butchery as a means of putting an end to the disturbances. Hence, on April 13, 1919 (*Bisakhi Day*) he, with his 150 soldiers, appeared at the entrance of Jallianwala Bagh, where more than 20,000 people had gathered to protest peacefully against the recent firing. The crowd was ordered to disperse but there was no way out; the military had blocked the only exit. Within three minutes an order was

given to fire at point-blank range on the unarmed mass. As firing started, there spread a great panic and confusion. Some tried to scale the eight-foot walls, but in vain. A hail of bullets cut them down. Blood flowed freely on that tragic day. According to official report, 379 persons were killed and about 1,200 were wounded in a few horrible minutes. The greater tragedy was that the wounded were left in the place overnight to die without care or attendance. A brave woman, who managed to reach there, in spite of the terror and curfew, has described the pitiable condition of the dead and wounded in these words: "People cried with agony and anguish; none to quench their thirst, none to attend to their bleeding and gaping wounds. What a frightful spectacle and what a scandalous state of affairs : The members of the police were actively busy in removing cash and valuables from the pockets of the dead and the wounded." When the detail was later on explained to General Dyer, he bluntly said : "That was not my job. There were hospitals".

Dyer did not feel satisfied with this massacre of defenceless people. In his determination to teach the citizens a lesson, he ruled Amritsar with an iron hand. Public floggings were not infrequent. Detention of all nationalist leaders was the order of the day. But the most degrading measure was a 'crawling order' imposed on all Indians, who passed a narrow lane in the city, where Miss Sherwood had been assaulted during the disturbances. The humiliation of crawling on all fours to and from one's home, writes Michael Brecher, was not to be forgotten and forgiven by those, who were subjected to this indignity, or indeed, by any sensitive Indian."

The Punjab Government tried to suppress the news of this tragedy but, somehow or other, it filtered through. Disturbances followed in Lahore, Gujranwala and Kasur. The whole of the Punjab was in a ferment. The Government declared martial law under the garb of which indescribable horrors and excesses were perpetrated on the people. For all these atrocities of hideous nature the Government had to pay very dearly. The moral prestige of the Government received a severe blow, while the moral strength of the movement increased. The people were not frightened into submission. On the contrary, their determination to fight the foreign rule became stronger. "The Amritsar tragedy" writes Mr. Thompson, "was a turning point in Indo-British relations almost as important as the Mutiny of 1857". The sensitive Indians could not

forget and forgive this profound insult to the national honour, pride and self-respect†.

Reports on the Panjab Tragedy

When the news of the terrible events slowly percolated to other parts of India, a wave of horror and indignation swept the country from one end to the other. The great poet Rabindranath relinquished his Knighthood as a measure of protest and wrote a strong but dignified letter to the then Viceroy. Sir Shankar Nayyar resigned from his membership of the Viceroy's Council. Pandit Madan Mohan Malaviya brought to light the ugliest facts about the reign of terror in the Punjab and framed 92 questions alleging specific instances of brutality for the Imperial Legislative Council. The Government of India then appointed a committee of eight members (including three Indians) under Lord Hunter to enquire into the Punjab disturbances. The Congress also instituted its own committee having Mahatma Gandhi, Motilal Nehru, C.R. Dass, M.R. Jayakar etc. etc as its members, to conduct an inquiry into the occurrences in the Punjab.

The Congress Enquiry Committee in its report stated that (i) the arrests of Mahatma Gandhi, Dr. Satyapal and Dr. Kitchlew were politically inexpedient and morally least justifiable. Since the people of Punjab were already agitated over the Rowlatt Acts and the forced collections of funds from them during the war years, it was unwise to provoke them by making these arrests. (ii) The action of the 13th April 1919 was nothing but a cold-blooded and calculated massacre of innocent, unoffending, unarmed men and children, unparalleled for its heartless and cowardly brutality in modern times.* (iii) Government should take adequate measures to give relief to the families of the dead and the wounded. It should also remove the glaring defects of the administration.

In spite of their most horrid findings, the official committee in its report declared General Dyer's action as merely "a grave error of judgement". Montagu, the Secretary of State for India,

*The affair at the Jallianwalla Bagh certainly had a 'moral effect', particularly upon Gandhiji. For him, there was now no possibility of compromise with the British and he declared that 'co-operation in any shape or form with this satanic government is sinful'. The last years of British India were ushered into the sound of General Dyer's guns." *Michael Edwards : The Last Years of British India* P. 44.

†*Siaramaya's : The History of the Congress ; Vol. I, P. 177*

appreciated Dyer's honesty of purpose and unflinching adherence to duty. The Government of Britain pronounced only a mild censure on Dyer and removed him from active service. But the House of Lords passed a resolution by 120 votes to 89 deploring the removal of Dyer from the army as unjust. Worse still, Dyer was acclaimed as a hero and was presented with a sword and a purse of £ 26,000 by his admirers. *The Morning Post* of London collected a sum of £ 50,000 to be presented to General Dyer. This policy of the British Government and the people grievously disappointed the Indians. It also exasperated their national indignation. Gandhiji lost faith in the British sense of justice and made up his mind to launch a campaign against the Government.

Significance of the tragedy

The Jallianwala tragedy was an event of a very far-reaching significance. It outraged the sentiments of all decent men including Churchill and Clemenceau. Churchill characterised Dyer's action as 'frightfulness' while Clemenceau wished that there must be no more Amritsars'. For, he genuinely felt that that was not the way to govern a country. It was, indeed, shocking that some English officers had descended to a level far below that of humanity. The British nation, despite its high traditions, had offered their active or passive support to this outrage on humanity. The Indians at large painfully realised the depth of their helplessness in their own homes. They also read in this outrage a new challenge to the Indian nationalism. From now on it became the paramount duty of the Indians to avenge at any cost the wrongs and insults inflicted by those, who were shorn of all human instincts, and animated by nothing better or higher than a naked brutal force. This lesson was deeply implanted in the heart of every Indian, particularly that of Gandhiji, the greatest Indian of the day, and inspired him to launch a campaign against the British, which ultimately led to their final expulsion from India.* Prof. Spear rightly observes : "Dyer thought that he was saving the Punjab for Britain. In fact, he nearly lost India not only to Britain, but to the West altogether".

*It will not be out of place to mention here that O. Dyer, the Governor of Punjab, who had approved and encouraged all the excesses, was not even censured by the higher authorities.

The Khilafat Agitation and national unity

In this atmosphere of national resentment, a new issue blazed across the Indian horizon, which deeply stirred the emotions of the Indian Muslims. This issue was concerned with the Khalifa of Turkey—the highest religious head in the Islamic world. After the First World War was over, the Allies decided to dismember the Ottoman Empire and to disband the office of the Khalifa. This decision of the Allies could not but arouse the anger and hostility of the Muslims in India. For, it not only violated the pledge of Lloyd George made during the war but was also a direct affront to their religious beliefs. Deputations were sent to the Viceroy and even to London to stop the disruption of the Turkish Empire, but in vain. The final decision on Turkey was announced by a *communique* of Government of India published on 15th May, 1920. Although Turkey retained its capital Constantinople, yet there was almost a complete dismemberment of the Turkish empire.

Disgusted with the attitude of the British Government, the Muslims of India started a powerful politico-religious movement known as Khilafat agitation. Its leaders Ali Brothers (Muhammed Ali and Shaukat Ali) plunged themselves heart and soul into the movement and the Khilafat Committee became a powerful, representative and decidedly aggressive body. Muslim theologians also lent their support to the Khilafat movement and there was a great excitement in the country. The success of this agitation was further assured by the large measure of sympathy and support, which the Muslims received from Mahatma Gandhi. This great national leader saw in this movement an opportunity to establish cordial relations between the Hindus and the Muslims and asked the Hindus to attach more importance to the Khilafat question than to the Reforms. In consequence, many Hindus became members of the Khilafat committees and helped the agitation also with money. As a reciprocal gesture, the Muslims joined the Congress in a considerable number. According to Dr. Rajendra Prasad the Maulanas supported the programme with religious fervour and declared that any co-operation with the Government would be a sacrilege.* Mahatma Gandhi was soon recognised as the leader of the Muslims as well as of the Hindus and the all-India Khilafat Committee in May 1920 adopted his non-co-operation programme to fight against the British.

*Prasad Dr. Rajendra : *Auto-biography* P, 111.

SECTION II

THE NON-CO-OPERATION MOVEMENT

Non-co-operation made official policy of the Congress

After the Khilafat Committee had accepted Gandhiji's leadership and programme, it became imperative for the Congress to give its final decision on the oft-debated issue of non-co-operation. The Congress, therefore, met at a special session in Calcutta. Their deliberations soon evinced that it was not clear sailing for the Mahatma. Almost all the prominent leaders including Lala Lajpat Rai and C. R. Das were still opposed to or were sceptical of *Satyagraha*. Moti Lal's decision to follow Mahatma Gandhi turned the scales. Non-co-operation became Congress policy, though many senior congressmen remained unconvinced. When the Congress held its annual session at Nagpur at the end of the year (December, 1920), the critics were also won over. According to Michael Brecher, "So persuasive was Gandhi even among the older men that C. R. Dass, who had gone to Nagpur with the avowed intention of undoing the Calcutta resolution with hundreds of delegates at his own expense, succumbed after an all-night discussion with the Mahatma."* Thus non-co-operation became the official policy of the Congress.

Programme of the Movement

The Mahatma's programme of non-co-operation was simple and seemingly negative in character. It mainly consisted of four boycotts : (a) boycott of the impending elections of the Legislative Councils under the Government of India Act, 1919 ; (b) boycott of Government and Government-aided schools and colleges ; (c) boycott of the law courts and surrendering of titles and distinctions conferred by the Government, (d) boycott of the foreign cloth. The non-co-operation resolution also advised : (i) refusal to attend Government Levees, Durbars and other official and semi-official functions held by the Government officials, or in their honour : (ii) refusal on the part of the military, clerical and labouring classes to offer themselves as recruits for service in Mesopotamia. The constructive side of the programme embodied : (1) the establishment of national schools and colleges for the education of the children ; (2) the use of private arbitration courts in place of Government courts for litigation etc. ; (3) the adoption of *Swadeshi* in piece-goods on a vast scale ; (4) the revival of hand-spinning and hand-weaving ; (5) the removal of untouchability.

*Michael Brecher ; Nehru, *A political biography* P. 71.

Progress of the Movement

Before his launching of the non-co-operation campaign, Gandhi ji had a tour of the whole country. He explained to the people his new programme and also made it popular amongst them. After having thus prepared the necessary ground, he returned the Government medals, which had been given to him in recognition of his services in the First World War. The whole nation then rose as one man. Thousands of patriots surrendered their titles. Masses of students left the government-controlled educational institutions. The lawyers of the eminence of Lala Lajpat Rai, C.R. Das, Moti-Lal Nehru, Vithalbhai Patel, Dr. Rajendra Prasad etc. etc. gave up their practice and plunged into the movement. Several Muslim leaders like Ali Brothers, Dr. Ansari and Abul Kalam Azad also came forward as non-co-operators. Seth Jamna Lal Bajaj promised to pay an annual sum of Rs. 1,00,000 for the maintenance of non-practising lawyers. Many a national university like Bihar Vidyapith, Gujrat Vidyapith, Benaras Vidyapith, Muslim University Aligarh, Jama-Milia, Delhi, Tilak Vidyapith etc. etc. sprang up in the country. The number of the national schools considerably rose and they were affiliated to these national universities. The *takla* and *charkha* appeared in every home. They became the symbols of the movement, both in its political as well as its economic aspect. The *charkha* appeared on the national flag and dominated the political history of India throughout the 'Gandhian Era'. This unusual progress of the movement had an immediate effect on the Viceroy (Lord Chelmsford), who wrote that he was puzzled and perplexed by the Congress movement.

Government repression

In this potentially explosive situation, the British statesmen arranged for the visit of the Prince of Wales to India. Perhaps, they believed that the Prince's presence would excite the imagination of the masses with their traditional reverence for royalty. And that the movement might die down. The Congress, thereupon, requested the authorities to abandon this idea. For, it was not proper to make use of the Prince of Wales to support Government's declining prestige in India. They also requested the Government not to compel them to call on the people to boycott the Prince's visit and all functions connected with it. Despite this timely notice or warning, the Government made no change in their plan. They erred and erred grievously. Consequently, a complete suspension

of public life, including the closing of business houses and schools preceded the Prince, wherever he went. Empty streets greeted him and the functions held in his honour were boycotted. The Government now struck and struck hard. All Congress and Khilafat organisations were outlawed and a policy of mass arrests was adopted. In the next five months, 30,000 nationalists were sent to prison with their eminent leaders viz., Mahatma Gandhi, the Ali Brothers, Lala Lajpat Rai, Moti Lal Nehru, Hussan Ahmad, Abul Kalam Azad and others.

Suspension of the Movement

This unusual repression of the Government could not dishearten the Indians. The Congress in its session of Ahmadabad (December, 1921) decided to intensify the movement and Gandhiji was given full powers in respect of that. But before Gandhiji could plan any effective measure, there was an outbreak of mass violence at the village Chauri Chaura in the Gorakhpur district of the United Provinces. A crowd of Congress volunteers, backed by a thousand peasants, came into clash with the authorities there. The police fired on them and they retaliated by burning down a police station and some policemen. When Gandhiji came to know of this holocaust, he was appalled by this violation of his creed. He announced that the Indian people were not yet ready to wage a non-violent struggle. And so long as they had not imbibed the significance of *Ahimsa*, it would be dangerous to go ahead with the *Satyagraha* movement, for what happened in Chauri Chaura could happen in other places as well. He (Gandhiji), therefore, summarily called off the campaign.

According to R.C. Majumdar the suspension of the Non-co-operation was Gandhiji's serious blunder, which retarded the progress of the national movement to a very considerable extent. If he could not foresee the possibility of violence in any part of this vast sub-continent during the campaign, he must have been a very poor judge of human character indeed. Either he should not have begun Civil Disobedience, unless he was assured that above 300 millions of Indians had all been inspired by his precept and example, or having begun it without that assurance, he should not have been deflected from his course by a single incident of violence, however

bad that might be.”*

Hyem 1 Coupled

Significance of the Movement

Some critics of Gandhiji boldly assert that his non-co-operation movement was a dismal failure. On account of the boycott of legislative councils many Congress-patriots could not serve the motherland as their members. To the councils were elected such selfish opportunists, as preferred to act as Government yes-men. The boycott of the educational institutions and law courts proved equally futile. The preference for government degrees and certificates in matter of employment soon forced the Indian students to join Government schools and colleges. The lawyers had also to go back to the law courts for their livelihood. The sudden collapse of the movement by Gandhiji damped, for a time, the spirits of the people. This also gave the Government an opportunity to shift their responsibility of the grave happenings in Bombay, Chauri Chaura and other places on Gandhiji or the Congress. Moreover, it became exceedingly difficult for the Indians to get their grievances (relating to Punjab disturbances) redressed. The Government, taking advantage of Gandhiji's unpopularity, soon arrested him. The Congress support of the Khilafat agitation is also assailed and precisely for two main reasons : First, it indicated, in no uncertain terms that the Congress leaders were also opportunists. Secondly, the Indian Muslims were so much annoyed with the sudden suspension of the movement that their indignation gave a severe blow to the national unity.

Though non-co-operation movement did not come up to the Indians' expectations, yet it had some very far-reaching effects. It served as a baptism of fire which initiated the people to a new faith and new hope, and inspired them with a new confidence in their power to fight for freedom. It also revealed that the Congress movement had, for the first time, become a really mass movement

*The reaction of Gandhi's action on his fellow-workers [is thus described by Subhash Bose : "The Director's decree was obeyed at the time but there was a regular revolt in the Congress camp. No one could understand why Mahatma should have used the isolated incident at Chauri Chaura for strangling the movement all over the country. Popular resentment was all the greater because the Mahatma had not cared to consult representatives from the different provinces and because the situation in the country as a whole was exceedingly favourable for the success of the civil disobedience campaign. To sound the order of retreat just when public enthusiasm was reaching the boiling point was nothing short of a national calamity."

in the sense that national awakening had not only penetrated to the people at large, but also made them active participants in the struggle for freedom. Besides, the Indian National Congress was almost over night turned into a genuine revolutionary organisation. It was no longer a deliberative assembly, but an organised fighting party pledged to revolution. The movement had also shown the willingness and ability of the Indians to endure hardships and punishments inflicted by the Government. Another important result of this movement was that it made our countrymen bold and patriotic. They lost the fear of the prison as well as of the might of the Government. Rebellion entered into their spirits and they were ready to defy the Government at any national emergency. It was aptly remarked that the 'memory of its (movements)' greatness survived, and was destined to inspire the nation to launch a more arduous campaign at no distant a date.' Activities like hand-spinning, hand-weaving etc. which formed a part of the constructive programme of the movement, also received a great encouragement.

SECTION III

THE SWARAJYA PARTY

Suspension of Satyagrah and Council-entry controversy

When Gandhiji announced the suspension of the movement, the prominent Congress leaders were in the jails. They were surprised and shocked over Gandhiji's decision. Both Motilal Nehru and Lala Lajpat Rai wrote letters from the jails condemning his action. In their notes they said : 'This decision is greatly harmful to the country. It will not only demoralise the people but also mean a set back to the prestige of the nation.' The letters from the other leaders were also in the same vein. C.R. Das in his speech at Amroti indignantly observed that Gandhi 'had bungled and mismanaged.' In the All-India Congress Committee, which met on February 24, in Delhi, Gandhiji was loudly assailed for calling off the movement. From the controversy over the 'issue of suspension' it appears that, if these leaders had been out of jails, they would have challenged the very leadership of Gandhiji and continued the non-co-operation movement*. Though Gandhiji defended his case quite firmly, yet he could not satisfy his critics. It caused a split in the Congress, dividing it into two camps : one firmly defending Gandhiji's decision and his future programme ; the other

bitterly condemning the suspension of the movement and advocating change in the future course of action.

The former, who were known as Gandhi-ites or No-changers, held the view that the country was not yet ready for launching a *Satyagraha* movement. It was, therefore, in the fitness of things to continue the constructive programme of spinning, weaving, temperance, removal of untouchability etc. etc. They did not favour the idea of entering the councils. C. Rajagopalachari and Dr. Rajendra Prasad were the leaders of the No-changers. The other section led by Motilal Nehru, C.R. Das and Ajmal Khan pleaded for a change in the constructive programme of the Congress. They held that the retreat of Gandhiji at a time, when public enthusiasm was reaching the boiling point, had considerably weakened the national strength. To rejuvenate it, something dynamic and visible was needed. Moreover, the principle of non-violence did not promise to establish an enduring Hindu-Muslim unity. Led by these and such other arguments, these Pro-changers, as they were called, stood in favour of entering the councils instead of boycotting them. Since Gandhiji had a majority in the meeting, his opponents could not carry their point. The decision went in favour of the No-changers. Soon after this, Gandhiji was arrested and sent to the jail.

Gaya Congress—Birth of Swarajya Party

Even after the all-India Congress Committee had decided in favour of continuing Gandhiji's programme without any change, the council-entry controversy did not end in the Congress circles. The differences between the No-changers and Pro-changers became sharper at the Gaya session of the Congress held in December, 1922. On this occasion, Mr. C.R. Das, the President of the Congress, elaborated his scheme of entering the legislatures with a view to offer 'uniform, continuous and consistent obstruction' to the Government.* To his dismay, his scheme was outvoted by No-changers, who still clung to Gandhiji's constructive programme.

*Das favoured council entry on the grounds that (i) it will dispel the prevailing disappointment among the Indians, and inspire them with a new confidence, (ii) it will eliminate the possibility of opportunists entering the councils, (iii) the elected members of the Congress will carry the programme of non-co-operation in the councils, (iv) it will be easy to criticise the Government, (v) the elected members will be in a position to legislate in the interest of India.

Das, thereupon, resigned the Presidentship of the Congress* and the Pro-changers formed the Swarajya Party. Das was its President and Motilal Nehru its Secretary. Its other prominent members were : Hakim Ajmal Khan, Vithalbhai Patel and W.C. Kelkar.

Principles and Programme of the Swarajya Party

The Swarajists and the Gandhi-ites had little differences as regards their ultimate goal. Both aimed at winning Swaraj for the mother country. But the former's method of political action was different from that of the latter. The Swarajists did not look upon the *satyagraha* as an effective method of political warfare; nor did they see eye to eye with the Gandhi-ites on the question of boycotting the legislatures. They, on the other hand, believed in capturing seats in the legislatures in order to wreck the citadel of bureaucracy from within. 'Obstruction' to the Government in its working was the keynote of their policy, while the mending or ending of the new constitution (1919) was their immediate objective. By rejecting all important legislative measures and budgets, they planned to bring the Government machinery to a stand-still. The Swarajists also hoped to infuse enthusiasm into the masses by fighting elections.

Swarajists at the Polls and After

In accordance with their programme, the Swarajists fought elections to the legislatures in 1923. Though they did not have the full support of the Congress, their achievements were, nevertheless, quite commendable. They emerged the largest and the best disciplined group in the Central Legislative Assembly with 45 members out of 145. Although short of working majority, the Swarajists were able to hinder the smooth flow of Government-inspired legislation, in co-operation with the Nationalist Party and some Independents. In the provincial elections, the Swarajists' success was less spectacular : they won a clear majority in the Central Provinces and were the largest party in Bengal. In both the provinces, they succeeded in wrecking the experiment of dyarchy by refusing to form ministries and by using their power to nullify the efforts of other groups to create stable majorities in the legislatures. In 1924 the Swarajists moved an amendment in the Central

*It is said that No-changers requested Mr. Das to reconsider his decision. He refused, saying that as he could not carry the majority with him he had no right to continue as President.

Assembly urging the Government to take early steps for the revision of the Act of 1919, to call a Round Table Conference including the native representatives to recommend a new constitution for India, and to submit the same to the British Parliament for enactment after its approval by the Indian Legislature. The amendment met with a great success and *Muddiman Committee* was subsequently appointed to enquire and report as to how far the Reforms of 1919 had worked successfully. When Gandhiji came out of the jail, he was upset over the division in the Congress. He entered into a compromise with C.R. Das and Motilal Nehru. According to Dr. Rajendra Prasad the success of the Swarajya Party was one of the reasons for Gandhiji's agreeing to a compromise with it.

Differences in the Party and its disintegration

In spite of their successes in the Indian legislatures, the Swarajists could not maintain for long their position. With the withdrawal of co-operation by the Nationalist Party, their position in the Central Assembly was considerably weakened. Differences within the Swarajya Party itself in the Central Provinces (over the question of accepting office in the Governor's Executive Council) gave it another serious setback. The Swarajists of Bihar, much to their discredit, showed an unusual keenness for ministerial chairs. Some Swarajists expressed the view that their 'policy of obstruction' had proved harmful to the interests of the Hindus. They also began to doubt its practical utility, for the Governor-General had managed to run the Government on the strength of his special powers. Even in those provinces, where Swarajists had succeeded in wrecking the experiment of dyarchy, the Governors had continued to run the administration. As a consequence, the majority of the Swarajists turned in favour of non-co-operation. In the midst of these developments Mr. C.R. Das died. This sealed the fate of the Swarajya Party.* The subsequent efforts of Motilal to adhere to the 'policy of obstruction' could not prove fruitful.

Achievements of the Party

The policy and programme of the Swarajya Party were subjected

*Even before the death of C.R. Das the internal dissensions in the party had considerably deepened. A prominent Swarajist, Tombe, who was President of the C.P. Legislative Assembly, had accepted the membership of the Governor's Council without consulting the members of the party and without tendering resignation. Pandit Motilal Nehru disapproved of Tombe's action, but Kelkar, Jayakar and some other supported it.

to ■ very severe criticism. Mr. Bipin Chander Pal and Joseph Baptisa expressed open dissatisfaction with the strategy of obstruction. Mr. Surendranath Banerjee described it as futile and meaningless. It is also true that the Swarajists could not bring the Government machinery to a stand still as they had originally-planned. But, in spite of all this, the Swarajists' contribution to the national movement can hardly be disclaimed. When they ventured to form the 'Swrajya Party', Gandhiji's termination of 'non-co-operation' had plunged the country in the deepest gloom. The people at large had been greatly dispirited. The Congress was not in a position to restart *Satyagraha* movement. Some new policy and programme were needed to inspire confidence among Indians. This need of the country was fulfilled by the Swarajists, who came forward with their 'policy of obstruction, to face the situation. Inspired by this new programme of theirs, the Indians took a keen interest in the ensuing elections, returning a powerful contingent of the Swarajists to the Central Assembly with redoubtable Motilal as their leader. After having entered the legislatures, they brought a new life to them. They never failed to promote the national cause there. It were the Swarajists in the Assembly, who moved a successful amendment for the revision of the Constitution ; it were they whose efforts led to the appointment of the *Muddiman Committee* ; it were they who exposed the inherent weakness of the Dyarchy ; and, lastly, it were they who boldly and successfully arrayed themselves against the official majority in the councils. Furthermore, their policy of obstruction and successful tactics enlivened the masses and discredited the Government. The earlier appointment of Simmon Commission was also an achievement to their credit.

It will not be out of place to mention here that the policy and programme of the Swarajists spread a new consciousness among the Indians and made the Government more unpopular. If the Indians could venture to start the Civil Disobedience movement in the subsequent years, the Swarajists must also share the credit. For, their efforts had infused a new confidence and courage into the people. Their success in creating deadlocks in the assemblies convinced the British authorities that Indians were dissatisfied with their existing government and longed for freedom. This naturally gave strength to the Indians' demand for independence.

SECTION IV

THE SIMON COMMISSION, 1928

Circumstances favouring its appointment

The Swarajists in the Central Legislature had successfully impressed upon the Government the need of an early revision of the Constitution of 1919. They had also urged the authorities to call a Round Table Conference, having Indian representatives on it, to recommend a new constitution. Before the Government could take any step to meet this demand of theirs, it thought it advisable to make an assessment of the Indian situation by sending a commission. This Government decision was conditioned also by some other political developments. After the declaration of Turkey as a secular state by Kamal Pasha in 1922, the Khilafat question had lost its importance. This gave a serious blow to the Hindu-Muslim unity. The League leaders, who had ceased to enjoy any political importance during the Khilafat agitation, took advantage of the situation. They again accepted the communal politics and revitalised the Muslim League. Their nefarious propaganda and activities soon made the situation very tense. The foundation of *Hindu Mahasabha* in 1923 and the launching of *Shuddhi* Movement by Swami Shradhanand added fuel to the fire. In consequence, there broke out communal riots, which continued to vitiate the Indian atmosphere for a number of years. The British statesmen, who never failed to fish in the troubled waters, thought it politic to despatch a commission at the earliest. For, they rightly believed that the commission then despatched would take full advantage of the prevailing communal tension in India and paint her black. And this would, in turn, give them a handle to withhold the grant of more political concessions to India. Besides, the Conservatives, who looked upon themselves as more faithful to the imperial interests than the Labour Party, were anxious to solve the Indian problem in their own term of office. For, they were not sure to fare well in the ensuing elections of 1929. Led by all these considerations, the Conservative Government in England made an announcement with regard to the sending of a commission to India in November 1927, about two years before it was due.

Composition and aims of the Commission

The commission of inquiry instituted by the Government was to have seven members. And all of them were to be Englishmen. Its leader Mr. Simon was an eminent lawyer of England.

The exclusion of the Indians from a body, which was to prepare a constitution of India, was highly resented by the Indians. The Congress made a demand for giving equal representation to the Indians at the proposed commission, but it was turned down. The Secretary for State for India (Lord Birkenhead) held the view that it was not possible for them to include the Indians in the commission for (a) the report of the commission was to be presented before the British Parliament ; (b) the number of the Indian political parties being large, their representation on the commission would make it an unwieldy body ; (c) in view of the conflicting interests of the Indian political parties, it would not be fair to give representation to some of them only. These arguments of Lord Birkenhead were not convincing. As a matter of fact, the British Government wanted to keep the control of India's political progress in their own hands. They did not wish to give any right to the Indians in this respect.

Boycott of Simon Commission

The exclusion of the Indians from the Simon Commission was a great injustice to our countrymen. For, they had no voice in the framing of their own constitution. They took it as a national insult. Hence, all political parties including Congress, Hindu Mahasabha and a wing of the League, expressed dissatisfaction with the all-white Commission. They also decided to boycott it in both the political and social spheres. They were neither to give evidence before the Commission nor were they to help it in its fact-finding business. They were rather to express the popular discontent by greeting them with *hartals* and demonstrations.

The Commission paid two visits to India : the first lasting from February 31, 1928 to March 31, and the second from October 11, 1928 to April 13, 1929. On both the occasions, black flags greeted their appearance in cities and towns, while the cry of 'Simon Go Back' reverberated its wake. The firings in Bombay, Madras and other places could not dishearten the patriots, who continued to demonstrate against the Commission. The police charged the demonstrators with *lathis* at Lahore, when Lala Lajpat Rai was seriously injured. He remained in a critical condition for some days and then died on November 17, 1928. His death caused deep sorrow and anger to the Indians. In the U.P., Pandit Jawaharlal Nehru and G. B. Pant were also molested by the policemen. The Commission thus came to be associated with police baton. Infuriated at the excesses of the police officials,

the revolutionaries of the Punjab under their leaders S. Bhagat Singh avenged themselves upon Mr. Saunders and also threw a bomb in the Central Assembly with a desire to check the Government from its oppression.

SIMON COMMISSION REPORT

In spite of its boycott and anti-demonstrations, the Simon Commission managed to tour the country with the help of bureaucracy and Government stooges. On 7 June, 1930, it published its report which had been cautiously prepared and carefully worded. Its chief recommendations were as follows :

(a) *Recommendations with regard to Provincial Governments*

(i) 'Dyarchy' as a form of government in the Provinces should be abolished. The Provinces should be given full autonomy including the department of Law and Order. To put in other words, the Ministers should be entrusted with full control of the provincial administration. The Governors of the Provinces should, however, have overriding powers in certain matters, like internal security, safeguarding of all communities, etc.

(ii) The Provincial Legislative Councils should be enlarged. In the most important provinces, the Legislative Councils could have 200 to 250 members.

(iii) A Provincial Fund should be constituted for ensuring adequate resources to the provinces without infringing their autonomy.

(b) *Recommendations with regard to Central Government*

The Commission did not recommend the introduction of responsibility at the centre. Its members held the view that so long as they did not obtain a satisfactory solution of the defence of India, it was not possible for them to introduce responsible government at the centre. They, therefore, recommended that

(i) The Governor-General should select and appoint the members of his cabinet. He should be the actual and active head of the Government, and, in some matters, his powers should be enlarged.

(ii) The Central Legislature should be reconstituted. Its Lower House should be called the Federal Assembly. It should be enlarged and be elected by the Provincial Councils. The upper House—the Council of State—should remain much as it was.

(iii) The Commander-in-Chief should not be a member of the

Viceroy's Executive Council and he should not sit in the Central Legislature.

(iv) The High Courts should be placed under the administrative control of the Government of India.

(c) *Recommendations with regard to Home Government*

(i) The India Council should not be abolished. The functions and membership of this Council should, however, be reduced.

(d) *Some other recommendations of importance*

(i) The ultimate constitution of India must be federal.

(ii) Burma should be excluded from the new constitution.

(iii) Franchise should be lowered and extended, but the communal electorates should be retained as the basis of representation.

Evaluation of the Report

Sir John Simon was, no doubt, a leading lawyer of England. He had with him a team of experienced and able persons. They all put in their best to prepare their report. But, in spite of all this, the report submitted by them proved to be very disappointing. For, the members of the Commission, while preparing this great document, did not show that liberality and impartiality, which was expected of them. According to Richard B. Gregg, "There are (in the Report) some distortions of emphasis amounting almost to omission of pertinent facts, but these were probably intentional. The impression it made upon England and upon the United States was that India presents a problem of tremendous extent and complexity. The *London Spectator* aptly described it as a 'Book of Difficulties.'

It is true that the Commission had recommended the abolition of 'Dyarchy' as a form of government in the Indian Provinces. But the new system (Provincial Autonomy) devised to take its place was also defective. On account of the overriding powers of the Governors, its smooth and successful working was greatly doubted. Besides, the Indians' demand for responsible government at the centre was not accepted; nor did the Commission recommend the transfer of Defence to the Indians. More than that, the Report had completely disregarded the Indians' aspirations, which had recently been imbibed from the non-co-operation movement. Mr. Andrews writes: "The Report dealt more with that old India which I knew, when I first went out there nearly thirty years ago, before

the national movement had started ; it shows little understanding of the Young India, which we see rising to-day on the tide of national upheaval."

With all the shortcomings to its discredit, the Simon Commission Report proved a document of considerable importance. It threw the necessary light on the Indian politics and also on the problems closely connected with it. According to Prof. Coupland, 'the Report provided the most complete study of the Indian problem..... and added another work of first rate value to the library of British political science.' The significance of the Report lies also in the fact that most of its recommendations found a place in the subsequent Act of 1935. By recommending the abolition of 'Dyarchy' in the Provinces, the Simon Commission Report lent a great strength to India's constitutional progress.

SECTION V

ALL PARTIES CONFERENCE AND NEHRU REPORT

All Parties Conference

While making his announcement with regard to the appointment of Simon Commission in November, 1927, Lord Birkenhead, the Secretary of State for India, had also declared that the Indians were incapable of solving their own political problems. He had pointedly observed that Indians could not produce a constitution acceptable to all the Indian political parties. This declaration of Birkenhead was an open challenge to the Indian statesmanship. The Indian leaders, who were confident of their political acumen, did not delay in accepting this challenge. To their initial advantage, the atmosphere in India had been rendered favourable (for a joint effort) by the almost unanimous opposition of the Simon Commission. Hence, the idea of calling an all-parties conference found favour with the Congress. According to Dr. Rajendra Prasad this move of the Congressmen was inspired by not only their desire to meet the British challenge but also by their keenness to place their ideas and demands before the Indians through the constitution framed in consultation with other political leaders. They held the view that British Government would find no difficulty in accepting this constitution.

The first meeting of All-Parties Conference was held at the invitation of the Congress on 12 February, 1928 at Delhi. The representatives of about 29 parties and organizations participated in it. Since no unanimous decisions could be arrived at on certain

important issues, the next session of the conference was held in May, 1928. As a result of the deliberations at this meeting, a small committee was appointed under the chairmanship of Pandit Motilal Nehru to consider and determine the principles for the constitution of India*. The committee submitted its report in August, 1928. This report came to be known as Nehru Report or Nehru Constitution.

Nehru Report and its Recommendations

The Nehru Report was drafted by very able and experienced Indian leaders. It was the outcome of their rich political experience and mature understanding. Its main recommendations were as follows :—

(1) India shall have the same constitutional status in the British Empire as the Dominion of Canada or Commonwealth of Australia. On the attainment of this status, she will be styled and known as Commonwealth of India. *In other words, it laid down Dominion status and not complete independence, as India's political objective.*†

(2) The Commonwealth of India shall have full responsible government both at the centre and in the provinces.

(3) The Commonwealth of India shall have a Parliament consisting of a Senate and a House of Representatives, with powers analogous to those of the Dominions.

(4) The Central Executive of the Commonwealth shall consist of the Governor-General, the Prime Minister and six other Ministers. The Prime Minister shall be appointed by the Governor-General and the Ministers shall also be appointed by him on the advice of the Prime Minister. The Executive shall be collectively responsible to the Parliament.

(5) The Provincial Executive shall consist of the Governor and an Executive Council having not more than five Ministers. While appointing the executive council, the Governor shall select the Chief Minister and appoint others only on his advice. There shall

*The Nehru Committee had on its panel as many as 28 members including Subhash Chandra Bose, Sir Tej Bahadur Sapru, Sir Ali Imam, G.R. Pardhan, S. Mangal Singh, etc. They had to work very hard, and mainly for two reasons. First, on account of the various political complications the work to be done was very difficult. Secondly, the time at the disposal of the Committee was very short.

†The Committee had to accept Dominion status (instead of Independence) because on any higher ground a general agreement among so many different parties was not obtainable.

be a single chamber in the Provincial Councils.

(6) There shall be joint, mixed electorates throughout India for the House of Representatives and the Provincial Legislatures.

(7) There shall be no reservation of seats for the House of Representatives except for Muslims in provinces, where they are in a minority and non-Muslims in the N.W.F. Province. The Muslims or non-Muslims, where reservation is allowed to them, shall have the right to contest additional seats.

(8) Reservation of seats, where allowed, shall be for a fixed period of ten years.

(9) There shall be no state religion for the Commonwealth of India or for any Province in the Commonwealth.

(10) There shall be a Committee of Defence for the Commonwealth of India to help the Minister in charge of Defence. This Committee will consist of Prime Minister, Foreign Minister and the heads of the various military departments.

Reaction to the Nehru Report and Congress ultimatum

The Nehru Constitution was an admirable work of Indian statesmanship. The nationalist Muslims expressed their satisfaction with its recommendations. It was unanimously accepted by the All-Parties Conference at its Lucknow session. But, when it came up for discussion at the Calcutta Convention, Mr. Mohammad Ali Jinnah put forth the following suggestions and pressed them in the form of amendments to the Nehru Constitution : (a) The Muslims should have one-third representation on the Central Legislature ; (b) The Punjab and Bengal Legislatures should have Muslim representation on the population basis for ten years ; (c) Residuary powers should be vested in the Provinces and not in the Centre. Since Jinnah's amendments were rejected in the Subject Committee of the Convention, he left it in protest. Thereafter, he joined the more reactionary section of the Muslims led by Aga Khan and Muhammed Shafi. He also summoned a meeting of the All-India Muslim League at Delhi, where his fourteen points were put forth as the minimum Muslim demands and as the pre-requisites to any political agreement.

Apart from the League, some sections of Sikhs, non-Brahmans and Backward and Depressed Communities also did not fully approve of the Nehru Constitution. Even Christians were of the opinion that it did not sufficiently safeguard the interest of minorities. The Government refused to accept it on the ground that its

recommendations were unusually revolutionary in nature. Thus, none of the political parties or organizations evaluated the Report with the desirable sympathy or consideration. A survey of our present constitution deepens this conviction for, many of the proposals of Nehru Report have been given a place in it. For example thirteen of the nineteen rights enumerated in the Nehru Report have been included without any material alternation in the chapters on Fundamental Rights and Directive Principles of our Constitution.

The Indian National Congress was also not unanimous in its support to the Nehru Report. The older group led by Pandit Motilal Nehru was in favour of its acceptance in toto, the younger section led by Jawaharlal Nehru and Subbash Chandra Bose would accept it only on the basis of complete national independence. Mahatma Gandhi was faced with a very difficult situation. He did not like a rift between the Congressmen over the question of complete independence *versus* Dominion Status. He, therefore, intervened and presented a compromise formula, which accepted the Nehru Report in its entirety, provided the British Government accepted the Report as a constitution for India before the end of 1929. In the absence of such an acceptance, he proposed another mass civil disobedience campaign. The compromise resolution was at last accepted and it put a stop to active political agitation (for a time) by the Congress.

SECTION VI

LORD IRWIN'S DECLARATION ACT, 1929

and

(A Complete Independence Resolution, Dec., 1929)

The Nehru Constitution was followed by a significant statement by the Viceroy known as Irwin's Declaration of October, 1929. This Declaration, on Irwin's own admission, was made on behalf of the British Government and was in response to the Congress ultimatum with regard to its objective. But much to the Governor-Generals' own dismay, it was strongly criticised by a powerful section of the British press. And it put him and the British Government for a time in a difficult situation. The jubilation of the Indian political parties at this announcement also proved short lived. For, attacked by the Tories and disowned of his own Government, Irwin staged a complete *volta face* by repudiating the true import of his own statement. The Declaration, however, served one very useful purpose. It impressed upon the Indian political leaders

that all pronouncements of the British Government should be read, re-read, scanned and analysed, in a dispassionate and realistic manner.*

Why did the British Government make this Declaration

The Simon Commission's tour of India was accompanied by *lathi*-charges, scuffles and such other measures of repression. The police were allowed to run amuck and manhandle even the most respected of our leaders. Lala Lajpat Rai, while leading the demonstration at Lahore, had scummed to their *lathi* blows. This was followed by the reappearance of the cult of bomb and pistol. The revolutionaries of the Punjab under their veteran leader S. Bhagat Singh murdered Mr. Saunders, who was held responsible for the death of Lalaji. They also threw a bomb in the Assembly Hall at Delhi. Bengal too witnessed the outbursts of revolutionary activities in a much greater frequency. The Government used its long arm of repression to crush such unlawful activities, but could not improve the situation. The Lahore Conspiracy Case leading to a hunger strike and martyrdom of Jatindra Nath Das (1929), the Chittagong Armoury Raid, and fight at Jalalabad Hill (1930), hanging of Bhagat Singh and his two comrades, rather rendered the situation worse than before.

In those days of national discontent and indignation, strikes of industrial labour became increasingly frequent. Over 1,00,000 textile workers went on strike in Bombay province and remained off the job for six months. A quarter of a million jute workers in Bengal followed suit. So did the employees of the South Indian Railways and the tinplate workers too. The Government arrested the labour leaders and gave them rigorous punishments. But this could not improve the situation. Throughout 1929, youth and the student organizations grew up all over the country. They not only held their congresses and conferences in the leading cities of India but also held an All-India Congress of students at Lahore. It was presided over by Pandit Madan Mohan Malaviya.

When the political atmosphere in India was marked by unrest and tension, the general elections in England (1929) put the Conservatives out of office, and the Labour Ministry with Mr. Ramsay Mac Donald as Prime Minister and Mr. Wedgwood Benn as the Secretary of State for India, came into power. Since the Labour Party was known to be sympathetic to the Indians' demands, its advent to power inspired hopes in India. The new Government

*Prasad Dr. Rajendra : *Autobiography* P. 302.

soon summoned Lord Irwin to London to discuss with him the political condition in India. The Viceroy stayed there for about four months and came back to India in October, 1929. Soon after his return, he made an important declaration on behalf of the British Government.

Essence of the Proclamation and Delhi Manifesto

In his declaration of October, 1929, Lord Irwin said, "I am authorised, on behalf of His Majesty's Government, to state clearly that, in their judgement, it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status." He also hinted at the possibility of holding a Round Table Conference in England to consider the Indian question.

Soon after the publication of this statement, there ensued a controversy over it in the press. For, the Viceroy's declaration, like such other announcements of the Government, was not clear. And the Government could interpret it as it suited their interests. The Congress leaders (Mahatma Gandhi, Pandit Moti Lal Nehru, Srinivasa Ayyangar, Vithalbhai Patel, Dr. Ansari etc.), thereupon, assembled in Delhi to deliberate upon the Viceroy's declaration as regard its true import. Though all of them felt that the declaration was vague and did not meet the demand made in the Calcutta Congress, yet they did not give up their hopes. They passed a resolution or manifesto in which they appreciated the sincerity underlying the Viceroy's pronouncement. They, also expressed their readiness to participate in the Round Table Conference, if : (a) all discussions at the proposed conference were held on the basis of 'Dominion Status' for India ; (b) the Congress was given predominant representation ; (c) a general amnesty was granted to all the political prisoners. Since Subhash Chandra Bose and Jawaharlal Nehru were not in favour of offering co-operation on the basis of 'Dominion Status,' they resigned from the Congress Working Committee.

Opposition to the Proclamation in England

Lord Irwin's declaration put the Labour Government in a great fix. It had to face the combined opposition of the Tories and the Liberals in the Parliament. Lord Birkenhead and Lloyd George supported Mr. Churchill in his strong criticism. The efforts of Mr. Baldwin and Sir Samuel Hoare to defend Lord Irwin did not prove useful. For, the Labour Party did not command absolute majority

launch his campaign of civil disobedience. Hence, on 12th March 1930, Mahatma Gandhi, accompanied by his 78 picked followers, set out on his famous march from his *ashram* at Sabarmati for the small village Dandi on the sea-shore—a distance of 241 miles—to break the Salt Law. This pilgrimage of Gandhiji was quite inspiring. Along the route he preached the message of non-violence; and as he marched a fire of patriotic fervour flared through the country. The villagers flocked from all sides, sprinkled the roads, strewed leaves on them, and, as the pilgrims passed, sank on their knees. Over three hundred village headmen gave up their jobs. According to Subhash Chandra Bose, “The Dandi March of Mahatma Gandhi was very significant. It may be compared to Napoleon’s march on Paris on his return from Elba and to Mussolini’s march on Rome with a view to the seizure of political power. Never was the wave of patriotism so powerful in the hearts of mankind as it was on this occasion, which is bound to go down to the chapters of history of India’s national freedom as a great beginning of a great movement.*

On the 24th day, Gandhiji and his party reached the sea at Dandi. Early next morning, soon after the morning prayers, they broke the Salt Law by picking up salt from the sea-shore. It was a signal for the army of the non-violents to charge the citadel of British imperialism. The ‘General’ had made his first attack. Gandhiji announced his intention of raiding the salt depot of Dharasana in Surat District. But before long he was arrested and put into prison. Abbas Tyabji took up Gandhiji’s place as leader of the Salt *Satyagraha*, but he was also arrested. Then Sarojani Naidu hurried to Dharasana and directed the raid on it. This raid was followed by many others of this kind.

Spread of Civil Disobedience Movement

The developments at Dandi and Dharasana were followed by country-wide breaking of the salt laws. At places, where salt law could not be violated because of the absence of saline water, other laws were violated. I. M. Sen Gupta, the Mayor of Calcutta, broke the Sedition Law by publicly reading the seditious literature.

*Once the march began people caught the spirit of his teachings and the plan of his campaign. People soon realised that non-co-operation and non-violence were not a mere negation but a scheme of resistance. *Satyapal and Prabodh Chandra : Sixty Years of Congress*, P. 290.

People in C. P. and Bombay cut down timber in defiance of forest laws. A campaign for non-payment of taxes and land-revenue was launched in Gujrat, U. P. and Midnapur Distirct in Bengal. As a part of the campaign, boycott of foreign goods and picketing of liquor shops were also started on an extensive scale. Besides, ladies of respectable families joined in hundreds and suffered imprisonment. Thus, the Civil Disobedience movement, which started with the Dandi March, soon developed into a very strong movement.

Government Repression and its failure

The Government did not at first take the movement very seriously. Perhaps, they did not expect the Dandi March to lead to any serious developments. The Anglo-Indian papers ridiculed the idea of *Salt Satyagraha*. *The Statesman* of Calcutta wrote that Gandhiji 'could go on boiling sea-water till Dominion Status was attained.' Mr. Brailsford, an English journalist in India, described the Dandi March as the "Kindergarten stage of revolution". He smiled at the notion that the King Emperor could be unseated by boiling sea-water in a kettle. But as the movement gained strength and popularity, the Government was placed in a trying position. People would not obey ; they would not fight. Such obduracy was indeed maddening. In conventional rebellions the rebels use weapons and come to an armed clash if they do not wish to obey. But Gandhiji and his followers were unconventional rebels. They were fighting on a moral plane with weapons never before used by any rebel.

In such a situation of helplessness, the Government struck hard and in a ruthless manner. They employed various forms of repression to put down the movement. The Congress was declared illegal and its offices were occupied by the police. All leading Congressmen including Gandhiji, Jawaharlal and Vallabhbhai Patel were jammed behind the prison bars. *Lathi*-charges, arrests and heavy fines became the order of the day. Mr. Brailsford (an eye-witness) in the course of an article for the *Manchester Guardian* wrote that an English officer invaded a college at Lahore and beat not only students in the class but the professors also. The most brutal and cowardly assaults were made on helpless prisoners in jails. Subhash Bose refers to an attack made in the Alipore Central Jail at Calcutta in April, 1930, when many distinguished persons including Bose himself fell down on the ground and remain-

ed unconscious for more than an hour. The oppression by the authorities in Gujrat was so great that 800,000 people migrated from British territory to the villages nearby in the neighbouring Baroda State. Mr. Webb Miller (the foreign correspondent of the United Press U.S.A.), who happened to be the eye-witness of the grim tragedy, wrote, "At times the spectacle of unresisting men being methodically bashed into a bloody pulp sickened me so much that I had to turn away."*

In spite of the horrors that were let loose upon people, the movement continued with unabated fervour. Nearly 100,000 people, including 15,000 Muslims, went into prison. The most spectacular demonstration of non-violence was seen at Peshawar, where a number of Pathans held their peace and faced unflinchingly the bullets and bayonets of the military. So impressive was the forbearance and patience of these normally unruly Muslim tribes that on one occasion two paltoons of British-led Hindu troops refused to fire on them, when ordered to do so. The firing at Peshawar was not an isolated instance. During the course of movement, the Government took similar action many a time and at various places. As a result of the wholesale arrests, the whole country seemed to be in jail.

The repression employed by the Government to crush the votaries of non-violence was hardly commendable. The terrible assaults of the English in the name of law and order on defenceless people—people whose only crime was the love of their country—was the blackest spot on the much-lauded British justice and fair play. With every lathi blow, with every skull broken or rib fractured—down went the moral justification of the Empire and the British prestige in the eyes of the world. Besides, the strength and discipline of the civil disobedience movement convinced one and all that the national movement in India was not a reality but a paramount reality. It was no use putting barriers in its way, for, they were to be swept away one by one by an ever-rising tide of national floods. The authorities should try to make terms with it. Another encouraging feature of the movement was that thousands of women came out of conditions of privacy and semi-seclusion to support the movement. In Delhi alone 16,000 women were imprisoned on the charge of picketing in front of the wine-shops.

*Webb Miller : *I Found no peace*, Pp. 183—184.

Unsuccessful attempts at Compromise

When the whole of India was in the grip of excitement and indignation, some persons of importance tried to mediate between the Congress and the Government. The first of such persons was a British journalist, Mr. George Solocombe. He interviewed Mahatma Gandhi in the Yarvada jail to ascertain from him the conditions on which he would like to call off the strike and then participate in the proposed Round Table Conference. He also met the two Nehrus in the Naini Jail. After he had discussed the whole problem with Congress stalwarts, he drafted a statement, which could serve as the basis of further negotiations between the Congress and the Government. Since the response of the Government to this statement was not favourable, Solocombe's efforts did not prove fruitful.

After Solocombe had failed in his attempt, the two well-known liberal leaders Sir Tej Bahadur Sapru and Mr. M. R. Jayakar. took the initiative. They also met Gandhiji, Nehrus and others. They had with them the blessings of the Viceroy. But, despite all this, they could not succeed in their mission.

SECTION VIII**FIRST ROUND TABLE CONFERENCE**

and

(GANDHI-IRWIN PACT, 1931)

First Round Table Conference

When the efforts for a compromise between the Government and the Congress were in progress, the British Government published the Simon Commission's Report. It also convened a Round Table Conference at London to deliberate upon the Report and the Indian problem. The first Round Table Conference opened its session on November 12, 1930 in St. James, Palace, London and it continued till 19th January, 1931. It was inaugurated by His Majesty the King Emperor and presided over by Mr. Ramsay MacDonald, the then Prime Minister. The Conference was attended by 89 members—16 from the British Parties, 16 from the Indian States and 57 from the British India. The fifty seven members of the British India were the Viceroy's nominees, and a good number of them had been chosen for their antipathy to the Indian nationalism. The eminent Indian leaders, who participated in its

deliberations were : Sir Tej Bahadur Sapru, M. A. Jinnah, B. R. Ambedkar and M. R. Jayakar. Though the absence of the Congress and Gandhiji was conspicuous, the conference started its deliberations. No progress could be made for a time, as the Hindu Mahasabha and Muslim parties clung to their fixed positions. It seemed as if the search for a suitable basis of constitutional reform was doomed to failure. However, in the beginning of January, 1931, the deadlock was broken by Sapru's proposal for responsible government in an All-India Federation with appropriate safeguards in the transitional period. To the surprise of all, the Princes indicated a willingness to join the proposed Federation and even the Liberal and Labour spokesmen of England approved the scheme. Though issue of communal representation could not be solved by the Minorities Sub-Committee, yet enough progress had been made by other such Sub-Committees. The Conference was adjourned *sine die* on 19th January, 1931. The Prime Minister in his valedictory address reiterated the Conference's decision that India should have a federal form of Government consisting of British Indian Provinces and the Indian States and the responsible government should be introduced at the centre upon the establishment of a federation. He also expressed the hope that the Congress would abandon civil disobedience and attend the second session scheduled to be held in the autumn months of 1931. To create a proper atmosphere for the purpose, Mr. Gandhi and the nineteen members of the Working Committee were released on January 26th, which is India's Republic Day. This conciliatory attitude of the Government was also in part conditioned by the international situation, the economic crisis, the advance of Russia in China and the development in Italy under Mussolini.

The Gandhi-Irwin Pact or Delhi Pact, 1931

About a week or so after the release of Mahatma Gandhi and his colleagues, the Indian delegation to the first Round Table Conference landed in Bombay. Some of the members, notably Sapru, Jayakar and Srinivasa Sastri, met the Congress leaders at Allahabad and urged them to strengthen their hands by attending the second session of the conference. They also impressed upon Gandhiji the necessity of having an interview with the Viceroy. On February 14th, the Mahatma wrote to Lord Irwin seeking an interview in order to discuss the political situation. The Viceroy readily agreed and negotiations began forthwith on 17th February 1931. They met six times at Viceregal House

until at last, on the morning of 5th March 1931, an agreement was reached. According to the agreement, the Government agreed to

(a) — (i) withdraw its special ordinances, (ii) release political prisoners but not those convicted of violent acts or the soldiers who had refused to fire in Peshawar ; (iii) remit certain fines imposed on recalcitrant villages, (iv) allow certain villages to manufacture salt for their own use.

(b) Picketing was to be allowed but only within the limits permitted by the ordinary law, and discrimination against British goods was to cease.

In return for these concessions, the Congress agreed to (i) stop civil disobedience movement and (ii) to participate in the next Round Table Conference. (iii) Mahatma Gandhi, however, made most significant concession on the basic constitutional issue : he agreed "that in the future scheme of Indian Government..... Federation is an essential part ; so also are Indian responsibilities and reservations or safeguards in the interests of India, for such matters, as for instance, defences, external affairs ; the position of minorities, the financial credit of India, the discharge of obligations" (clause 2).

Significance of the Pact

Diametrically opposite judgements were passed on the Gandhi-Irwin Pact of 1931. Some pro-British papers considered it a victory for the Government and a feather in Lord Irwin's cap. A section of press hailed Gandhiji as the hero of the drama. They saw in the settlement a victory for passive resistance, the like of which history had never witnessed before. Warm tributes were paid to the personality of the Mahatma and he was acclaimed as a practical statesman, equally at home in the domains of religion and of politics. The majority of the papers were, however, profuse in their praise of both Gandhiji and Lord Irwin.

Some leaders of the Congress were, however, not happy over the settlement. Subhas Chandra Bose and his followers, particularly the Youth Organisation, openly expressed their dissatisfaction with it. They held that the Civil Disobedience Movement had failed to achieve its goal. What Gandhi had secured for India by way of constitutional progress could be easily had without the Civil Disobedience campaign involving untold

miseries and sufferings * Even Jawaharlal Nehru was shocked with clause 2 of the Pact. He writes in his autobiography : "I knew most of the clauses for they had often been discussed but at the very top, clause 2 with its reference to safeguards etc., gave me a tremendous shock". Another cause of dissatisfaction with the Pact was that the amnesty to political prisoners did not include those kept in detention without trial. Nothing was provided to get the death sentence of Bhagat Singh commuted.

Despite these failings, the settlement was endorsed by the Karachi Congress, because there was no other alternative. If the Mahatma was thrown overboard, there was no other person to lead the struggle, the technique of which he alone knew.

According to R. C. Majumdar the Delhi Pact was quite significant in one respect. For the first time in the history of British India, the British Government condescended to treat the Indian National Congress on a footing of equality as a political opponent, and entered on a prolonged negotiation with its accredited agent to settle terms of peace. The very fact that the Viceroy and Gandhi put their respective signatures on a treaty of peace put the Indian National Congress on a high pedestal and increased its prestige and stature. What was more important, the British practically conceded to the Congress a status and authority to speak for political India and consciously or unconsciously admitted its right to be heard on all future negotiations. This was no small a gain and British statesmen like Churchill fully realized that they had yielded grounds and the British prestige suffered a set back.† In addition to this, the people were offered certain facilities regarding salt. The way to the Congress participation in the second Round Table Conference was now cleared. All the safeguards, which the British proposed to incorporate in the

* In spite of its failure to achieve the goal, the Civil Disobedience movement had a great value and importance in India's struggle for *Swaraj*. It demonstrated the awakening of political consciousness among the masses to a degree undreamt of before either by the friends or foes of India. The Mahatma's call to the people for sufferings and sacrifice found a response in the hearts of men and women of India to a degree which ensured the success of India's struggle for freedom. The Civil Disobedience Movement had another good effect. It fully exposed the real nature of British rule in India in all its naked hideousness and lowered its moral prestige in the eyes of the whole world. As the great poet Rabindra Nath said, 'it was a great moral defeat for Europe and Asia could now afford to look down on Europe'.

† Majumdar : *R. C. History of Freedom Movement*, P. 380.

constitution to protect their interests could now be examined from the point of view of Indian popular interests.

SECTION IX

SECOND ROUND TABLE CONFERENCE

and

(COMMUNAL AWARD)

Governments' indifference to the implementation of the Pact

About a month after the Gandhi-Irwin Pact, Lord Wellington became the Governor-General of India. Like other civil servants of the time, he was also hostile to the Pact. He saw in it a triumph of the Congress and an added prestige for Gandhiji. Encouraged by this attitude of the Viceroy, the civil servants in India stiffened their backs and tightened their hold. They insisted on immediate payment of all taxes, both current and those in arrears, despite the peasant's plea of inability to pay. There were also disputes over the restoration of the confiscated lands provided for in the Pact. Besides, thousands of politicals, who were technically not civil disobedience prisoners, remained in prisons. Thus, in spite of the Congress suspension of the movement, the bureaucracy adhered to the policy of retaliation and put the *satyagrahis* in varied difficulties. In view of the Government's uncompromising attitude, the Mahatma was forced to declare his inability to participate in the London discussions. But after his second interview with the new Viceroy (Lord Wellington), he decided finally to leave for London. The change in the decision, according to Frank Moraes, was due to the fact that Gandhiji had sensed from the talk of the Viceroy that, if Congress embarked on non-co-operation, the Government would come down on it with a heavy hand. He and his colleagues, therefore, thought it advisable to participate in the Second Round Table Conference.

Second Round Table Conference and Gandhiji

The Second Round Table Conference opened in London on 7 September, 1931. It was attended by the representatives of Hindus, Muslims, Sikhs etc. etc. The Governor-General, in his efforts to denounce the Congress as a communal organisation, did not allow Dr. Ansari to participate in its deliberations. Hence, Mahatma Gandhi went as the sole representative of the Indian National Congress. He arrived in London on 12th September, 1931.

anxiety for the Indian leaders. They met in Bombay and then at Poona. Dr. Ambedkar, the most prominent leader of the Depressed Classes, was induced to join them. After many comings and goings, an agreement known as Poona Pact was reached. This Pact was considerably in favour of the Depressed Classes and the Hindus had to make a great sacrifice for saving the life of Gandhiji. According to this Pact :

(1) The Depressed Classes abandoned the separate electorates in favour of joint electorates.

(2) One hundred and forty eight (148) seats were reserved for them in the different Provincial Legislatures, instead of 71, which were granted to them under the Communal Award.

(3) Eighteen per cent of the seats in the Central Legislature were reserved for them.

(4) As regards the system of election to the reserved seats, the Depressed Classes were to first elect a panel of four candidates for each seat from which election would be made by the general electorates of Hindu voters.

(5) The Depressed Classes were to be given fair representation in the local bodies and public services.

It is true that Dr. Ambedkar fully exploited the situation in favour of the Depressed Classes. He secured for them double the number of seats reserved for them by the communal Award. But the leaders, who negotiated this Pact had no other alternative. They looked upon the national unity and Gandhiji's life as more important. The British Government accepted the Poona Pact and modified the Communal Award in accordance with its terms.

SECTION X

RESUMPTION OF CIVIL DISOBEDIENCE MOVEMENT AND AFTER

When Gandhiji came back to India after having attended the Second Round Table Conference, he found that the political conditions in the country had sufficiently deteriorated. During the period he was away in England, the Government of India had resorted to highly repressive measures in the U.P., Bengal and Frontier Province. In Bengal, there had been a recrudescence of revolutionary terrorism, chiefly by way of retaliation against the

high-handedness of the government officials and police excesses. The Frontier Government declared the 'Red Shirts' illegal and imprisoned their leaders, Khan Abdul Ghaffar Khan, the Frontier Gandhi, and his brother Khan Sahib. In the U.P., an ordinance was issued to crush the limited non-rent campaign, which the local Congress Committee had decided to start. Worse still, Pandit Jawaharlal Nehru and Mr. T. A. Sherwani, the President of the U.P. Provincial Congress Committee, were arrested, when they were on their way to Bombay to meet Mahatma Gandhi. In short, Lord Wellington made every effort to dispirit the Indian patriots by his indiscriminatory and ruthless measures.

Resumption of the Movement and Government Repression

Under these abnormal circumstances, Gandhiji telegraphically sought an interview with the Viceroy but the latter's reply was not satisfactory. He had agreed to meet Gandhiji provided the Mahatma did not discuss the emergency measures imposed on Bengal, the U. P. and the Frontier Province. The Congress Working Committee then hurriedly drafted a rejoinder, offering co-operation, if the Viceroy gave a satisfactory response to the demands of the Congress. It also called upon the country to resume Civil Disobedience, if such response was not forthcoming. The Viceroy refused to grant an interview 'under threat' and early next morning Gandhiji was arrested. This was followed by the issue of four new ordinances, which gave the Government of India powers even more far-reaching than those of 1930.* The Government lost no time in starting a campaign against the Congress.

Within a week, almost everybody of any consequence in the Congress was in prison. The Party was outlawed, its records were destroyed, its funds confiscated and its buildings seized. Moreover, about eighty affiliated or sympathetic organisations were declared illegal—Youth Leagues, Kisan Sabhas, Student Clubs, Congress-supported schools, etc. etc. Even the Congress-run hospital in *Swaraj Bhawan* was closed. Political meetings and processions were prohibited. The Congress press was gagged. Severe fines and imprisonments were meted out to those guilty of

†These four ordinances were: an Emergency Powers Ordinance, an Unlawful Association Ordinance; an Unlawful Instigation Ordinance, and Prevention of Molestation and Boycott Ordinance. Even the Secretary of State for India, Sir Samuel Hoare, told the House of Commons: "I admit that the ordinances that we have approved are very drastic and severe. They cover almost every activity of Indian life'."

aiding the Congress or hiding *Satyagrahis*. Land and property were confiscated in case of failure to pay taxes. Civil liberties were suspended. It was nothing short of martial law.

Though the Congress was unprepared for an all-out warfare at this stage and the Government's campaign was very devastating, yet there was no lack of enthusiasm. Bereft of leadership, funds and organisation, the rank and file fought on, offering various forms of civil disobedience, including the boycott of foreign goods and refusal to pay taxes. There was also no dearth of civil resisters. According to the Congress report no fewer than 80,000 men were imprisoned in the first four months of 1932. Many Indian women, including Nehru's two sisters, took part in the movement and suffered imprisonment. Pandit Nehru's mother was badly hurt in a *lathi*-charge made on the processionists during the National Week.

Despite the strict ban on public meetings, the annual session of the Congress was held under the clock tower in Chandni Chowk, Delhi—the main bazaar of the old city.* A series of resolutions reaffirming *Puran Swaraj* as the nationalist goal and endorsing the resumption of civil disobedience and the like were passed. The police arrived at the scene after the proceedings had been gone through and arrested a large number of persons. The next session was held under similar conditions in Calcutta on March 31, 1933. The President of the session Mrs. Sen Gupta observed on this occasion : “It is estimated that nearly 126,000 persons including several thousand women have been arrested and imprisoned during the last fifteen months.....fifteen months have not enabled the Government to achieve the object (that of crushing the movement within six weeks as Lord Wellington had boasted). Twice fifteen months will not enable it to do so”.

Suspension of the Movement

A few weeks after the Calcutta session, Mahatma Gandhi decided to go on twenty-one days' fast for 'self-purification' beginning on May 8th, 1933. Since it was in no sense a political act, the Government released him unconditionally on the first day of the fast. The Mahatma reciprocated by announcing the suspension of civil disobedience for six weeks and called for the release of all political prisoners. The Congress was proffering the olive branch, but the Government became adamant and insisted on

*It lasted for only ten minutes and 500 delegates participated in it.

complete termination of civil disobedience.

The sudden suspension of civil disobedience, without any rhyme and reason, came as a stunning blow to many a Congress leader. Vithalbai Patel and Subhash Bose, who were at that time in Vienna, issued a manifesto condemning Gandhiji's decision to suspend the movement and stating that it had virtually undone the work and sacrifice of the last thirteen years. It was also held that the suspension of the campaign was a confession of failure. Dr. R. C. Majumdar observes that the suspension of Civil Disobedience campaign was not only a blunder of first magnitude but a great tragedy. After plunging the whole country in a terrible welter of chaos and sufferings, the leader had bungled. He had no right to play ducks and drakes with the lives and fortunes of his countrymen in such an irresponsible manner. Worse still, when Mahatma Gandhi, after the suspension of the campaign, sought an interview with the Viceroy to find out any basis for agreement, the latter refused. This refusal was a national humiliation, a challenge to continue the struggle, but it could not be continued. Gandhiji's political weapon of *Satyagraha* had proved futile.*

Revival of the Swarajya Party and elections to the Central Assembly

The suspension of the movement was followed by a political stalemate. The Government held the view that they had successfully crushed the movement with their policy of repression. The Congress had no policy and programme at hand to inspire the masses. A number of Congress leaders, therefore, met in Delhi to chalk out their future course of action. This meeting was presided over by Dr. M. A. Ansari and those who took a leading part in the discussions included Dr. B. C. Roy and Mr. Bhulabhai Desai. After profound deliberations, the Conference decided that time had come to revive Motilal's old Swarajya Party and contest the elections for the Central Assembly, which were scheduled for November, 1934. The All India Congress Committee, which met at Patna in May, 1934, allowed the Congressmen to enter the Legislature. Mahatma Gandhi alone was given the right to offer Civil Disobedience, if and when he chose. Soon after the Patna Session, the Government removed the ban from Congress organisations and allowed them to function.

In November, 1934 came the elections to the Central Assembly. The Congress scored a notable victory, winning 44 out of the 49

*Majumdar, R. C. : *History of the Freedom Movement*, P. 395.

'general seats' Its success was all the more striking, because it had to face a powerful Government opposition. The position of the Congress in the Central Assembly was quite comfortable. With the support of the other nationalist groups it could invariably beat the Government on a vote.

The Third Round Table Conference and the Act of 1935

During the Disobedience Movement of 1932, the Congress leaders had been clapped into prison. While they were languishing behind the bars, the third session of the Round-Table Conference was held in London (November, 1932). Since the Congress was then in wilderness, there was no question of its participating. The Labour Party in England also did not take part, because its nominees were not acceptable to the Government. From India only *safe* men were invited. The decisions taken by His Majesty's Government at the Third Round Table Conference were published in a White Paper issued in March, 1933. The White Paper proposals formed the kernel of the Government of India Act, 1935.

The 1935 Act envisaged an all-India federation comprising princely States and the autonomous Governors' Provinces on certain terms and conditions, which were never fulfilled. It also conferred autonomy on the Provinces, with the Provincial Governors exercising a supervisory role. The first part of the Act was rejected by the Congress. It, however, accepted Provincial autonomy, which was to start functioning in the Provinces by the end of July, 1937.

Congress Ministries and Second World War

The general elections, as provided by the Act, were held in 1937. In accordance with its decision, the Congress fought the elections and achieved encouraging results. It succeeded in forming its own Ministries in 6 out of 11 Provinces. The Congress Governments had hardly worked for a couple of years, when the Second Great War broke out.

FURTHER READING

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2. *Sankaran Nair* : Gandhi and Anarchy
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4. *Raja Ram* : The Jallianwala Bagh Massacre

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6. *G. L. Banerjee* : Dynamics of Revolutionary Move-
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12. *Reinhard Frank* : British Tyranny in India
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14. *Satyapal and Prabodh
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15. *Michael Brecher* : Nehru : A Political Biography
16. *R. R. Diwakar* : Satyagraha in Action
17. *V. B. Kulkarni* : British Dominion in India and After

CHAPTER 18

Leaders of Modern India

The Indian national movement during the course of its life was nurtured by many an eminent leader. In spite of the fact that they differed in their religions, temperaments and even, at times, in their political ideas, they continued to guide it with unusual devotion. They were men of vision and deep political wisdom, having inordinate love for their motherland. They made huge sacrifices to promote the cause of national freedom. For the proper understanding of the history of freedom movement in India, a peep into their lives and achievements is, therefore, not only desirable but also essential.

(A) *Raja Ram Mohan Roy (1772—1833)*

Raja Ram Mohan Roy, the founder of the Brahmo Samaj, is generally acclaimed as the 'Father of Indian Renaissance' and the 'Prophet of Indian Nationalism.' He is also called the 'herald of a new age.' He was, undeniably, a great political leader, a staunch religious reformer and a zealous social worker. According to Nandlal Chatterji, "Raja Ram Mohan Roy was the human link between the unfading past and the dawning future, between vested conservatism and radical reform, between superstitious isolationism and progressive synthesis, in short, between reaction and progress."

Born in a Brahman family of Bengal, Raja Ram Mohan Roy was brought up as a strict Hindu. But, like many other youngmen of his time, he was educated in Islamic culture. He was also a deep

student of Arabic and Persian. During the period he was in the Company's service, he took to the study of English, which opened to him the whole range of western liberal thought. A seeker after truth, he also studied Christianity, which was being preached by the missionaries of those days. To understand this new religion better, he picked up some knowledge of French, Latin, Hebrew and Greek. He was also a great scholar of Sanskrit.

Raja Ram Mohan Roy remained in the Company's service for hardly nine years (1805—1814) and settled in the city of Calcutta after his retirement. During the remaining years of his life, he worked for the social, religious and intellectual uplift of his countrymen and achieved a great success in all directions. In 1828, he laid the foundation of the Brahmo Samaj, a new reformed sect of Hinduism.* This was, indeed, Raja's great achievement. It purged Hinduism of the customs and superstitions with which it was overlaid, and enabled it to withstand the onslaughts of the Christian missionaries. It also introduced a modern approach to various Indian problems. Consequently, India started on her long adventure in building up a new civilisation as a synthesis between the East and the West in the eighteen twenties, and it is in that sense that Ram Mohan Roy is the fore-runner of new India.

The Raja challenged not only the prevailing Hindu beliefs but also the vain social practices of the time. He started agitation for the abolition of *Sati* and threw himself heart and soul into it. He wrote numerous pamphlets to impress upon the Hindus that this inhuman rite was not sanctioned by their scriptures. The vigorous agitation of this great humanitarian ensured the success of Bentinck's measure. The Raja also fought against the abuses of caste, polygamy and idolatry. His work in the social sphere of the time proved very useful and offered a healthy background for the rise of Indian national movement.

The Raja did not fail to promote the civil and political rights of the Indians. He launched a spirited protest against the Press

* According to K. M. Panikkar, "The Samaj was not in its essence a Christian dilution of Hinduism, as has often been said, but a synthesis of the doctrine of the European Enlightenment with the philosophical views of the Upanishadas. As a religion Brahmo Samaj was based firmly on the Vedanta of genuine Hindu tradition, but its outlook on life was neither Christian nor Hindu, but European, and derived its inspiration from the intellectual movements of the eighteenth century." *The Foundations of New India*. P. 27.

Ordinance of 1823 and adopted all constitutional measures to get it repealed. He carried on a vigorous propaganda against the Jury Act, 1827. According to R. C. Majumdar, "Raja Ram Mohan Roy was the first Indian to voice the grievances of his country before the English authorities. He may justly be regarded as the pioneer of organised political movement in India, and the method followed by him marks the beginning of what came to be known in later days as constitutional agitation."*

Raja Ram Mohan Roy favoured the spread of Western Education in India. He advocated the cultivation of the English language, the study of English literature and specially sciences. As early as 1823, he requested the then Governor-General, Lord Amherst, that a more liberal and enlightened system of instruction, embracing mathematics, natural philosophy, chemistry and anatomy with other useful sciences be introduced in India, and a few gentlemen of talent and learning educated in Europe be employed for the purpose.

The Raja was thus a great man of his time, who always took his stand on the principles of reason and the rights of the individual. He is aptly acclaimed as the inaugurator of the modern age in India. He died in Bristol on 19 September, 1833. A pilgrimage now annually visits his tomb in the Arno Vale cemetery on each anniversary.

12 ✓ *Swami Dayanand Saraswati (1824—1883)*

Swami Dayanand Saraswati, the founder of the Arya Samaj, holds a high place among the leaders of modern India. Though primarily a social and religious reformer, he made no less significant a contribution to the cause of Indian nationalism. He is popularly acclaimed as a great "path-maker in modern India."

Swami Dayanand was born in 1824 in an orthodox Brahmin family of Morvi State in Kathiawar Peninsula. His father, Amba Shanker was quite a rich and influential person. While Dayanand was a boy of hardly fourteen, he lost his faith in the traditional religion and took to an ascetic life. He wandered practically all over India till his thirst for truth was quenched by Swami Virjanand, a Vedic scholar of the Punjab who had settled at Mathura. After he had completed his education there, he devoted

* Majumdar. R.C. : *History of Freedom Movement in India*. P. 291.

himself to the task of social and religious reformation. In 1875 he laid the foundation of the Arya Samaj, which developed into a great social, religious and educational movement.

Swami Dayanand Saraswati was inspired by a great mission. He wished to rid the Hindu religion and society of evil influences and exalt them to the pedestal of their ancient glory. He, therefore, revived Hindu Vedic rituals and institutions. He boldly rejected the hereditary system of caste and refused to recognise the authority or even superiority of the Brahamans merely on the ground of birth. He proclaimed the right of everybody to study Vedas and other Hindu scriptures. He denounced the worship of gods and goddesses and preached that only the Supreme Being should be worshipped. He worked to better the condition of the womenfolk and decried child-marriage and enforced widowhood. He also encouraged inter-caste marriages. But his more advanced step in the social sphere was the *Shuddhi* movement. It opened the doors of Hinduism to millions of such persons as had been willingly or forcibly converted to other religions, like Islam and Christianity. The *Shuddhi* proved to be a potent instrument for effecting the social, religious and even political unity of India.

Swami Dayanand not only fought against social disabilities, he also helped the cause of Indian nationalism. His stirring slogans like '*India for Indians*' and '*Back to the Vedas*' gave a clarion call to the Indian patriotism, while his powerful speeches instilled new courage and determination into the degenerated Indians. He successfully broke the spell of the western civilisation and impressed upon his countrymen India's past glories and her cultural greatness. According to his biographer H. B. Sarda : "Political independence was one of the first objectives of Dayanand. He was the first man to use the term Swaraj ; he was the first man to insist on the people using *Swadeshi* goods manufactured in India and discard foreign goods ; he was the first to recognise Hindi as a national language of India." Whatever one may think of the claims put forward by Dayanand's biographer, there can be no two opinions on the point that the great Swami infused a new life and spirit into his countrymen and taught them to love their cultural heritage and motherland. The Arya Samaj movement started by him proved an important force in India's transformation. It also gave to her (India) in the persons of Lala Lajpat Rai, Mahatma Hans Raj and Swami Shraddanand three selfless leaders

of outstanding merit. The Samaj set a pattern of educational institution, which 'became the foremost agency for planting a sturdy independent nationalism'.

(3) *Allan Octavian Hume (1829—1912)*

Mr. A.O. Hume, the founder of Indian National Congress, was born in England on 6 June, 1829. At the age of twenty, he joined the Bengal Civil Service in India. Thereafter he worked as a deputy collector and commissioner of customs. In 1870 he became the secretary to the Government of India. On account of his special knowledge of Indian agriculture, Lord Mayo entrusted to him the organisation of the Bureau of Agriculture to work out the salvation of rural India. During the long tenure of his service in India he had the occasions to serve the Indian people. He founded a number of scholarships for the maintenance of a few of the best students completing their higher education in the Agra College, and induced local rich men to follow his example. In 1859, Hume helped to start a vernacular paper named '*The People's Friend*.' It soon became popular in the North West Province, comprising Punjab and Utter pardesh, even as far away as Gwalior and Bharatpur. Towards the close of 1879, Mr. Hume came to know that there was a great discontent among the Indian masses. He was even once told by some religious devotees that "they feared the danger of a terrible outbreak, destructive to India's future."

Mr. Hume had a genuine sympathy for the Indian people. He wished to remove their feeling of despair. He did not want the unhappy occurrences of 1857 to be repeated. He, therefore, soon after his retirement in 1882, addressed an open letter to the graduates of the Calcutta University asking them to take an initiative in establishing an association "for the moral, social and political regeneration of their countrymen." Mr. Hume's appeal met with an immediate response and the Indian National Union was formed in 1884. On the suggestion of India's Grand Old Man, Mr. Dadabhai Naoroji, this Union was named as 'Indian National Congress' at its next session (1885) in Bombay. It is believed that the Union founded by Mr. A O. Hume was at first designed to be an all-India social organisation. But on the suggestion of Lord Dufferin, who then happened to be the Governor-General of India, it was given a political complexion.

Hume became the first General Secretary of the Congress and continued to take an active interest in its activities even at the

cost of his popularity with his countrymen. And, despite the Government's unsympathetic attitude, he always supported the Indians, cause in England. "But for such support from Mr. Hume and some other Englishmen," writes Prof. Hira Lal Singh, "the assertion of the Congress that the British nation was essentially just and sympathetic would have had no meaning".* He was one of the three prominent Congress leaders (Hume, Wedderburn, Naoroji), who laid much emphasis on the Congress propaganda in England. Writing in the year 1903, Hume urged upon Indians the need for 'consistent and persistent importunity' both in India and in England (and especially more in the latter) for the purpose of securing their aims. He was one of the members of the first deputation, which was officially sent by the Congress to England.

As General Secretary of the Indian National Congress, Hume bitterly criticised the hostile attitude of Auckland Colvin to the Congress and dealt with all the points raised by him. He said, "You are personally hostile to the Congress...that you desire to ruin all who take a prominent part in it.....that you will favour and reward all who oppose it." Mr. A.O. Hume thus rendered every useful service to the Congress in its early years. And whatever might have been his aims in founding this great organisation, he definitely deserves a high place among our European friends.

Before Hume left for England in 1894, addresses expressing affection and gratitude were presented to him at every important Indian city. At all these functions, the 'Father of the Congress' had one important message to emphasise: "Let nothing discourage you hold fast to the conviction that right must and ever does triumph." Hume had plans to return to India after some time but he was not destined to. On 31 July 1912, in his 84th year, the Father of the Indian National Congress passed away. The news of his death caused deep sorrow all over India.

In his inimitable way, Gopal Krishna Gokhale summed up India's gratitude to the worthy Briton in these words :

"Hume is one of those men, who appeared from time to time in this world under the dispensation of a wise Providence to help forward the onward march of humanity, whose voice sounded like a trumpet call waking up whole peoples from the slumber of ages-

*W. Wedderburn : *A.O. Hume* P. 79.

†Singh, Hira Lal : *Problems and Policies of the British in India*. P. 12.

and whose title to an honoured place in the history of nations no man could possibly challenge.”*

(4) *Dadabhai Naoroji (1825—1917)*

Dadabhai Naoroji, for long known as the Grand Old Man of India, was a prominent leader of the early Congressmen. He was the most distinguished member of the small band of Indians, who worked for the political advancement of India by awakening the consciousness of the British people to their sense of duty towards India and appealing to their democratic instincts and liberal principles. According to Dr. Pattabhai Sitaramayya, “He continued to serve the Indian National Congress till the evening of his life and took it through the whole gamut of evolution, from the humble position of being a people’s organ seeking redress of administrative grievances to that of a National Assembly working for the definite object of attaining Swaraj”. His long and distinguished record of selfless service to the mother country entitles him to a very high place among the patriarchs of India.

Dadabhai Naoroji believed that the British nation was essentially just and good and that if it could be acquainted with the true state of affairs, all the grievances of the Indians would be redressed. He, therefore, preferred to make England the centre of his political activities. In collaboration with another Indian patriot, Mr. W.C. Bannerjee, he laid the foundation of ‘*The London Indian Society*’ in order to enable the Indians and Englishmen to meet together and discuss various matters concerning Indian administration. During the third quarter of the last century, this Society did a very valuable work. It regularly held its meetings, which were generally well attended. The members over there not only discussed the grievances of India but also proposed the necessary remedial measures. *The London Indian Society* was soon recognised as an important political association, and its branches were established in Bombay, Calcutta and Madras.

*What memorial could justly honour the Founding Father of the Indian Freedom Movement? Hume himself had definite ideas on this ‘For God’s sake let me see money on memorials (to me). Give every farthing you can spare to the service of India.’ That was Hume and his high ideals. Cannot the Congress be worthy of its creator?

With the election of Naoroji to the British Parliament in 1892, there started a sort of organised agitation in England on behalf of the Congress. There was hardly any important Indian question, which he did not bring to the notice of the House. In June 1893, he succeeded in carrying through a resolution for the holding of simultaneous Indian Civil Service examinations both in India and Pakistan. In September of 1893, his amendment to the Madras and Bombay Armies Bill was accepted. In the same month, he urged the House to hold an independent inquiry into the conditions of India. It was the result of his sincere efforts that the Indian Expenditure Committee was appointed. He repeatedly demanded from the floor of the House and from the public platform that British rule in India should be based on British principles. When the First Great War broke out in Europe, he did not fail to discharge his duty. He asked his countrymen 'to stand by Great Britain in that hour of crisis, and, at the same time, demanded from the British Government the Indians' right of self-determination.

Dadabhai Naoroji was deeply loved by his countrymen. He also commanded the respect of one and all in the Congress. He presided over the Congress sessions thrice—in 1886, 1893 and 1906. The last session held at Calcutta under his chairmanship was quite significant. By adopting the resolutions of Boycott, *Swadeshi* and National Education, the Congress definitely accepted, in toto, the programme of the *Swadeshi* movement and identified itself with it.

Besides, Naoroji was the first Indian politician to expose the various causes of India's growing poverty. He boldly asserted that the British rule with its costly system of administration was a heavy drain on the poor resources of India. He explained his views in his monumental work *Poverty and Un-British Rule in India*.

Dadabhai Naoroji was, indeed, a great patriot of modern India and possessed in him some rare qualities of head and heart. It has been well stated by C.Y. Chintamani that there was "none in the galaxy of brilliant intellects and selfless patriots, who adored the public life of those days ; who could be compared to Dadabhai." Mr. Gokhale paid a glowing tribute to this Grand Old Man of

India in these words ; "If ever there was divine in man, it is in Dadabhai"*

(5) *Surendranath Bannerji (1848-1925)*

Surendranath Bannerji, popularly known as the 'Indian Demosthenes', was one of the eminent moderate leaders. He was born of a *Kulin* Brahman family of moderate means. He passed the Civil Service examination in 1869 and was one of the first few Indians to enter the Indian Civil Service. He had hardly put in a few years of service, when he was dismissed for a minor irregularity. After having been dismissed from his service, he established the well-known Ripon College of which he was the Principal for a number of years. He also founded a daily newspaper in English. *The Bengali*, which helped to foster the spirit of nationalism among the Indians.

It was neither as an educationist nor as a journalist that Surendranath was destined to become famous. He earned a name for himself in the field of politics. In about 1867, he founded the Indian Association, which worked a lot to awaken political consciousness among the people. As a special delegate of this public body, Mr. Surendranath toured all over the country and preached the gospel of constitutional agitation. According to R.C. Majumdar, "The propaganda tour of Surendranath Bannerji from one end of India to another constitutes a definite landmark in the history of India's political progress. It clearly demonstrated that in spite of the differences in language, creed and social institutions, the English-educated people of this great sub-continent were bound by a common tie of ideals and interests, creating a sense of underlying unity, which enabled them to combine for a common political objective".†

*The Parsees have provided a very remarkable array of Congress leaders and Dadabhai Naoroji was the first and foremost of them. For 61 years both in England and in India he served the motherland with undeviating purpose, with complete selflessness and with vitality of faith...He was the most moderate leader to start with but in the later part of his career continued disappointments drove him to employ language marked by great and increasing bitterness. His life was the loftiest ideal his countrymen could set before themselves in those days. He lived and laboured and left behind him the noble example of a dedicated life." *Satya Pal and Prabodh Chandra ; Sixty years of Congress.* P. 127.

†Majumdar, R.C. *History of Freedom Movement in India.* Vol. I, P. 370

Surendranath was one of the founders of the Indian National Congress and remained associated with it for a number of years. He had the honour of being elected its President (first in 1895 and then in 1902). He, however, came into all-India fame and leadership after the Partition of Bengal, when he organised the anti-Partition agitation. He advocated the boycott of British goods and favoured the encouragement of *Swadeshi* or Indian manufactured goods as its counterpart.

Surendranath Bannerji was a great patriot. He consecrated his life to the service of his motherland. He was also an eloquent speaker, and was for thirty-five years the trumpet voice of Indian nationalism. To quote K.M. Panikkar, "His amazing oratorical gifts and tireless energy in propagating the message of liberty helped greatly to create a sense of nationalism in the new classes".* Mr. Bipin Chandra Pal, who was then a college student, writes : "Surendranath's lectures made a very powerful appeal to our infant patriotism and lent new strength and even bitterness to the anti-British feeling that had already commenced to possess our youthful minds". Sir Henry Cottan admitted him as a powerful speaker, when he wrote : "From Multan to Chittagong Surendranath Bannerji could, by power of tongue, raise a revolt or suppress a rebellion." But the glowing tribute paid to this nationalist leader of India by Mr. William Wedderburn, a European friend of India, is of striking interest. He wrote : "He is a journalist, and educationist and a political agitator. He is a many-sided man. As editor of *The Bengalee* he is recognised as a trust-worthy journalist, as founder and head of the Ripon College he is appreciated as a brilliant educationist.....His mission is one of an angel—to promote peace and good will between India and England."

(6) Gopal Krishna Gokhale (1866—1915)

Gopal Krishna Gokhale, the most gifted member of the Moderate Party, was the greatest statesman of his time. He was also the noblest and the best of the Congress workers. Even his political rival Lokmanaya Tilak held the view that 'Gopal Krishna Gokhale was the diamond of India, the jewel of Maharashtra and the Prince of workers'. Mr. K. M. Panikkar is of the opinion that 'he was, in fact, modern India's first statesman'.

Mr. Gokhale started his career as a teacher of Mathematics but he soon rose to the position of the Principal of Ferguson

*Panikkar, K.M : *The Foundation of New India*. P. 91.

College, Poona. He put in twenty years service at Rs. 70/- per mensem under the Daccan Education Society' which had been founded by Mahadev Govind Ranade to establish national institutions for training young men for the service of the country. The compelling call of politics soon brought him into the Congress, where his earnest and selfless devotion to the cause of motherland made him one of the most respected figures.

As a Congress worker and leader, Mr. Gokhale rendered meritorious services to the mother country. He was the chief representative of Indian opinion, who worked in close consultation with the British Government during the formative stages of Morley-Minto Reforms. He was also responsible for the successful conduct of negotiations with General Smuts and the South African Government, which brought to a close the first stage of the struggle of Indians in that country for human rights. His role in the Imperial Legislative Council, to which he was elected in 1902, was no less commendable. By his uncommon mastery of facts and figures, by his clear understanding of the political problem', and by his sweet reasonableness in persuasive arguments, he established his dominating position in that hostile atmosphere. Even Lord Curzon, the champion of British imperialism, recognised him as an outstanding spokesman of the Indian point of view. He wrote : "I have never met a man of any nationality more gifted with parliamentary capacities. Mr. Gokhale would have obtained a position of distinction in any parliament in the world, even in the British House of Commons. Widely as we differed, I never failed to recognise either his abilities or his high character." It would not be out of place to add here that this great Moderate leader, besides being persuasive, was conciliatory and constructive. He would impress one and all by his polished speeches, parliamentary manners and formidable logic.

Gopal Krishna Gokhale was a fine speaker. He was a master of direct expression and lucid exposition. According to Mr. Wacha "when Gokhale began to speak, it was always a pleasure to hear that ringing voice, which went on fluently". He had also the knack of saying the hardest things in the gentlest language. While pleasant in his speech and criticism, he never minced matters. His political speeches at Manchester and at other places made a very good impression on the British public opinion. The editor of *The Nation* wrote in its columns that, 'there was no statesman in

England comparable to Gokhale, that he was greater than Mr. Asquith himself.' The arguments advanced by Gokhale at the Congress of 1906 were unassailable. Impressed by his deep insight into the affairs, Mr. Morley observed that Gokhale "had a politician's head and a sense of executive responsibility."

He is also accredited with the founding of the Servants of India Society, which aimed at training public workers pledged to work for the mother-land on a pittance and subject to rules of rigid discipline as well as loyalty to the Empire. The contribution of this Society during the fifty years of its existence has been astonishingly varied. In the work of organising labour on an all-India basis, it played a very notable part through Mr. N. M. Joshi, the father of Indian Trade Unionism, and at one time a senior member of the Servants of India Society. It also sent its men abroad to plead for India. The Society had always at its disposal a body of earnest workers to send to any area, where famine or flood relief had to be organised. In the sphere of reclamation work among tribal classes, also, it achieved a remarkable success.

Like all other moderate leaders of his time, Gokhale was essentially friendly to the British. He was an admirer of the West and looked upon the British rule in India as a boon for her people. While arguing his thesis, he once observed, "The blessings of peace, the establishment of law and order, the introduction of western education, freedom of speech and appreciation of liberal institutions, which have followed in its wake—all these are things which stand to the credit of British rule."

In spite of his being an advocate and admirer of the West, Gokhale was a patriot to his finger-tips. The dominating trait of his character was the intense love of his country. Nothing came nor could come between him and his love for the mother-land. He was also completely devoid of narrow sectarianism of every kind. In his eyes Hindus and Muhammadans, Marathas and Bengalis were absolutely equal. He was proud of being a Maratha Brahman, but he was prouder still of being an Indian. On his death, Mirza Abbas Ali Beg observed : "His lofty aims and ideals were entirely free from the taint of ill-will towards any community or creed. The charm of his manner, his gentle disposition, his high character, his persuasive eloquence, his winning candour, his modesty, his simplicity and his selflessness furnished a fitting

background to his commanding talents, which were unsparingly and unceasingly devoted to the service of his country and countrymen, whom he loved with all the fervour of his warm nature." In short, Gopal Krishna Gokhale was one of the greatest sons of India, who were unsurpassed in the hold they had acquired on the affectionate esteem and confidence of their countrymen. Mahatma Gandhi's tribute to Gopal Krishna Gokhale is considered to be the most befitting one. He wrote, "Sir Ferozeshah had seemed to me like the Himalayas—unscalable; the Lokmanya like the Ocean—and one could not easily launch forth on the sea. But Gokhale was as the Ganges—it invited one to bosom. In the sphere of politics, the place that Gokhale occupied in my heart during his life-time and occupies even now has been and is unique."

(7) *Bal Gangadhar Tilak (1856—1920)*

Bal Gangadhar Tilak, the father of Indian unrest, was the most gifted member of the Extremist Party. He was one of those patriots of his time, whose personal sacrifices and sufferings inspired the Indians with a spirit of resurgent nationalism, which developed in them a militant psychology and forced the British to leave India eventually. His selfless patriotism and indomitable courage, his spirit of independence and strong national sentiments, and above all, his single-minded devotion to the country and her people, entitle him to a high place among the architects of India's freedom.

Bal Gangadhar Tilak was a Chitpevan Brahman (of Poona), who dedicated himself to the service of mother country right from his youth. After having obtained degree in Law in 1879, he put himself into public life and started two well-known Papers, *The Kesari* and *The Maratha*. But his political career began in earnest in 1896, when the famine broke out in the Deccan. In those days of unusual despair and distress, he and his emissaries explained to the people the relevant section of the Famine Relief Code and distributed amongst them leaflets or pamphlets containing the much-needed extracts. Having thus educated the people about their rights, Tilak urged them to boldly demand the benefit of relief provided in the Code. He also asked them to be bold and not to pay the Government dues by selling their lands and cattle. His untiring efforts during this period of distress helped to alleviate the sufferings of the famine-stricken people and made him the champion of the peasants. Besides, his propaganda in favour of the

rights of peasantry brought about a significant change in the outlook of the people and shook them out of the undesired lethargy.

During the plague-year of 1897, Tilak again came forward as champion of the people. He formed ward committees, started hospitals, and organised volunteer corps to help the suffering humanity. Week after week, he thundered in *The Kesari* against the inhuman conduct of the Plague Commissioner's men (Rand's men), who had been let loose like 'a vast engine of oppression' on the people. Side by side with his strong criticism, Tilak made helpful and constructive suggestions calculated to lessen the rigour of the plague preventive measures. His selfless work gave a solid foundation to his popularity and leadership. It also strengthened his hold on the confidence of the people.

Tilak utilized the religious instinct and historical traditions of the people to engender in them the spirit of patriotism. And this was, indeed, his special contribution. He inaugurated the Ganpati and the Shivaji festivals and attached a great importance to their celebration. By means of processions, songs and speeches, which formed part of a their celebration, he sought to inculcate the spirit of nationalism in the masses. Apart from that, through his scholarly work, *Gita Rahasya*, Tilak taught the people to fight against oppression and unrighteousness.*

The Partition of Bengal in 1905 brought Lokmanaya Tilak into all-India fame as well as leadership. Following the ill-fated decision of Lord Curzon regarding Bengal, he came forward with his new ideas and weapons. In his well-known article *The Crisis Arrives*, he expressed his repugnance for the Moderates' methods and sounded a call to fight this unjust and anti-national measure. He also exhorted the nation to press forward and not to look behind, however repressive the government policy might be. At the Banaras Session of 1905 he explained his views to the delegates and also raised the slogan of 'Militancy not Mendicancy.' His policy and programme found favour with the masses and Tilak soon became a hero of the nation.

During the next three years Tilak personified the national movement. And the whole of India from Calcutta in the east to

*According to K.M. Panikkar, "This book of Tilak makes no allusion to politics and yet it is clear that the call to rise and fight as interpreted by Tilak is not in relation to epic struggle between the Kurus and the Pandavas but has direct reference to the political situation in India." *The Foundations of New India* : P. 39.

Karachi in the west and from Delhi in the north to Madras in the south, voiced its indignation against the Partition of Bengal under his leaderships.* Tilak led the national forces so skillfully that the people's enthusiasm grew year by year till they became a nation ready to make every sacrifice for the motherland. In 1908, Bal Gangadhar Tilak was tried for sedition and was sentenced to six years' imprisonment.

When Tilak was released in 1914, he rededicated his life to the service of the mother country. He started the 'Home Rule Movement' in 1916 and delivered the message of 'Swaraj' at every door. This new campaign of his had also a repercussion on the Indian National Congress and infused in it a new life and vigour. It also forced the Government to meet the Indians' demand of self-government. But, above all, this great movement showed Tilak at his best—'a sincere', fearless, unbending patriot, who fought for his country with a religious zeal without caring for the favours or frowns, either of the people or of the Government'.†

During his visit to England in 1918-19, Tilak did not forget the cause of his country. He made a serious attempt to acquaint the British people with the Indian affairs. He also made them realise that, in fact, they were responsible for the poverty, disease and illiteracy of the Indians. Mr. Arthur Henderson, the treasurer of the Labour Party, felt so much impressed by Tilak's arguments and friendly gesture that he wrote to him: "I need hardly tell you that we are in complete sympathy with the aspirations of the Indian people to attain Swaraj. I assure you that our Party will do everything in its power to help you and the cause of Indian democracy". According to D.V. Tahmankar, "It was the friendship and understanding built up by Tilak in 1918-19 that finally led to a Labour Government under Mr. Attlee granting complete independence to India in 1947."

On his return from England, Tilak attended the Amritsar session of the Congress. It was the last time when he appeared on the national platform. He returned to Poona very exhausted and tired. On August 1, 1920 he breathed his last. His death cast a

* Tahmankar : *Lokmanya Tilak* : P. 110—111.

† Majumdar, R. C. : *History of Freedom Movement in India*. Vol. II. P. 386.

gloom all over the country.*

Bal Gangadhar Tilak was undeniably a great son of India, who contributed more by his life and character than by his speeches and writings. He put a new self-confidence and self-assertiveness into his people and taught them to fight against political tyranny and injustice. He also infused a new life and vigour into the national movement and gave it a very different character. His personality made an indelible mark on the modern political thought and development of our country. It was his work stretching over a period of forty years, which made it possible for Mahatma Gandhi to push on the task of nation-building and to crown it with attainment of independence. Mahatma Gandhi's tribute to the work, character and personality of Tilak is the most befitting. He writes : "His patriotism was a passion with him. He knew no religion but love of his country. He was a born democrat. He had an iron will, which he used for his country. His life was an open book. His tastes were simple. His private life was spotlessly clean. He had dedicated his wonderful talents to his country. No man preached the gospel of Swaraj with consistency and the insistence of Lokmanya. His countrymen, therefore, implicitly believed in him. His courage never failed him. His optimism was irrepressible. He had hoped to see Swaraj fully established during his life-time. If he failed it was not his fault. He certainly brought it nearer by many years."

Tilak and Gokhale Compared

Dr. Pattabhai Sitaramayya, the official historian of the Congress, has attempted a very beautiful comparison of Tilak and Gokhale, the two political rivals, in the field of politics. He writes : "Tilak and Gokhale...were both patriots of the first order. Both had made heavy sacrifices in life. But their temperaments were widely different from each other. Gokhale was a Moderate and Tilak was an Extremist, if we may use the language in vogue at the time. Gokhale's plan was to improve the existing constitution ; Tilak's was to reconstruct it. Gokhale had necessarily to work with the bureaucracy ; Tilak had necessarily to fight it. Gokhale stood for co-operation wherever possible and opposition wherever necessary."

*The name and memory of Tilak are cherished with love and reverence, adoration and admiration, respect and regard, gratitude and glory, honour and thankfulness. He was a prince among heroes. He was bold and brave beyond measure. He was a born fighter. He proclaimed, "Swaraj is my birth right and I shall have it." *Satya Pal and Prabodh Chandra. Sixty Years of Congress P. 170.*

Tilak inclined towards a policy of obstruction. Gokhale's prime concern was with the administration and its improvement ; Tilak's supreme consideration was the nation and its upbuilding. Gokhale's ideal was love and sacrifice ; Tilak's was service and suffering ; Gokhale's methods sought to win the foreigner ; Tilak's to replace him. Gokhale depended upon others' help ; Tilak upon self-help. Gokhale looked to the classes and intelligentsia ; Tilak to the masses and the millions. Gokhale's arena was the council chamber ; Tilak's forum was the village *mandap*. Gokhale's objective was Self-Government for which the people had to fit themselves by answering the tests prescribed by the English; Tilak's objective was Swaraj, which is the birth-right of every Indian and which he shall have without let or hindrance from the foreigner. Gokhale was on a level with his age ; Tilak was in advance of his times.”*

(8) *Lala Lajpat Rai (1865 - 1928)*

Lala Lajpat Rai was an outstanding leader of pre-Gandhian era. He was fearless, bold and a passionate lover of India and her people. He served the mother country for more than forty years with utmost devotion, and then sacrificed his life at the altar of national freedom. His services to the country, as a political leader, a social worker, and also as an educationist, entitle him to a high place among the great men of modern India.

Though born of a family of moderate means in a village of the Punjab, Lala Lajpat Rai qualified himself for the Bar and started his practice as a lawyer at Hissar. In 1886, he shifted to Lahore, which was in those days the focal point to which all the ambitious and talented youngmen gravitated. There he gradually built up an enviable practice, which brought him both influence and affluence. He also developed attachment for the D.A.V. section of the Arya Samaj of which he soon became a prominent member. He took a leading part in the foundation of the D.A.V. College, Lahore and gave a handsome donation of Rs. 50,000 at the time of making his first appeal for the institution. He was also one of founders of Anglo-Sanskrit School at Jullundur.

Lala Lajpat Rai joined the Indian National Congress at its Allahabad session (1888) and remained its worker till the end of his life. He made his debut in the political life by sending a series of letters to Sir Syed Ahmad Khan, the founder of Aligarh University. His political wisdom, patriotic fervour and sacrificial services soon won him a place in the Congress elite and they chose

* *Sitaramayya : History of Indian national Congress : P. 99.*

him as a member of the Congress deputation to be sent to England in 1906. His press articles and speeches in England could not but create a stir there.

When schism in the Congress split it into two groups in 1907, Lala Lajpat Rai chose to join the Extremists, and worked in collaboration with Lokmanaya Tilak. As a senior lieutenant of this great Maratha leader, he carried on a hurricane of agitation and infused a new spirit and new confidence into the people of his province. His agitation against the agrarian policy of the Punjab Government saw his deportation (along with Sardar Ajit Singh) to Mandalay in Burma. During the First World War, he was practically an exile in the U.S.A., where he worked in co-operation with the Indian Revolutionary Party. To promote the cause of India's political freedom, he founded two societies there—*Indian Home Rule* and *Indian Information Bureau*. He also started a newspaper called *The Young India*. His articles in this paper aroused a strong feeling against the British Government. He also collected nearly forty thousand rupees and sent this amount to help Mahatma Gandhi in his anti-British movement in South Africa. It was said of him that no other Indian had utilised his stay abroad to such good purposes.

At the end of the War, Lala Lajpat Rai came back to India. His countrymen gave him a rousing reception. They also elected him to preside over the special session of the Congress in 1920. He became a member of the Indian Legislative Assembly in 1923 and worked for some time as the deputy leader of the Swarajya Party. In 1928, when Simon Commission reached Lahore, he led the boycott demonstration. But, unfortunately, he was violently assaulted in the *lathi* charge and died as a martyr on November 17, 1928. His death let loose a wave of anger and resentment throughout the country. In the words of Pandit Jawaharlal Nehru, "To find that the greatest of our leaders, the foremost and the most popular man in the Punjab, could be so treated seemed little short of monstrous and a dull anger spread all over the country."

Lala Lajpat Rai was a great patriot. He loved his country very deeply. Whether in India or abroad, whether in prison or in exile, he never forgot the welfare of his motherland. He lived for it and died for it. National sentiment was the driving force of his life. He always worked for national unity and communal harmony.

He was not only a great political leader, but was also a great social reformer and a humanitarian. He organised orphan relief in Lahore and worked for the amelioration of the victims of 1898-1900 famine and the Kangra earthquake of 1905. Lalaji also started the Servants of People Society, whose members rendered meritorious services to the people. His varied activities touched almost every aspect of the national life. It was he, who raised the Punjab National Bank to the status of a first-rate banking concern. The Lakshmi Insurance Company was another monument to his business acumen.

Lala Lajpat Rai was a great orator in Urdu. His thundering speeches and daring deeds brought him the title of the 'Lion of the Punjab.' According to Chintamani, "some of his speeches were so thrilling in effect that they can be compared to Lloyd George's orations". Besides being a forceful and eloquent speaker, Lalaji also wielded a facile pen. He wrote more than a dozen books and edited many newspapers, the more important being *The Punjabee*, *The Bande Matram* and *The People*. The object of his writings was not to make money but to inspire the Indian youth and kindle the fire of patriotism in them.

(9) *Bipin Chandra Pal (1858 – 1932)*

Bipin Chandra Pal was one of the eminent Extremist leaders of the early twentieth century. He was also a staunch patriot, a florid speaker and a man of great ability. He swept away the masses and the intelligentsia alike by his magic voice and stirring orations. He was a strong supporter of Boycott, *Swadeshi* and National Education. His views were in advance of even Tilak. He did not believe in Dominion Status and stood for fullfledged independence.

Pal rose into prominence in 1905, when, following the Partition of Bengal, he put himself heart and soul into the anti-Partition agitation. His fiery speeches and inflammatory articles brought him great fame and popularity. In the Surat session of the National Congress (1907) he fought for Tilak's candidature for presidentship. His speeches were regarded seditious by the bureaucracy and he was, in consequence, forced to quit the Madras Presidency. He was deported during Lord Minto's viceroyalty. At the trial of Aurbinda Ghosh, he did not want to harm his friend and the interests of his country. He refused to give evidence and cheerfully took his six months rigorous imprisonment for it. During the last about six years of his life, he parted company with the Indian National Congress. He died in 1932.

(10) *Mrs. Annie Besant (1847—1933)*

Mrs. Annie Besant, the Grand Old Lady of Indian Nationalism, was born in England in 1847. Her mother and grandmother were Irish by birth. It was, therefore, that she used to say that 'three-quarters of my blood and all my heart are Irish.' She joined the Theosophical Society in 1889, settled in India in 1893 and became the President of the Society in 1907.

During the first twenty years of her stay in India, she devoted herself to the cause of social and educational uplift of the Indians. She translated *Bhagvad Gita* into English and founded the Central Hindu High School and College at Banaras, which later on developed into the Banaras Hindu University. She condemned the social ills of the Hindus like early marriage and forced widowhood.

In the course of her social and educational activities, she came to realise that there could be no real improvement without raising the political status of India. She, therefore, joined the Indian National Congress and her entry brought a new force into the Indian politics. She started a weekly *The Commonweal* and through it spoke for religious liberty, national education, social reforms and political reforms aiming at self-government for India within the British Commonwealth. In 1914, she went to England and tried her best to form an India party in the Parliament. Though her efforts did not succeed, yet she definitely roused sympathy for the cause of India by her public addresses. She also set up Home Rule League and addressed a crowded meeting in the Queen's Hall, London. On her return to India, she bought a daily paper *The Madras Standard* and renamed it *New India*. In 1916, she seriously took up the question of uniting the two wings (the Extremist and Moderate) of the Congress and after many comings and goings she succeeded in her object. It was, indeed, her great service to the Indian nationalism and a lasting achievement to her credit.

In the same year, she inaugurated the all-India Home Rule League in Madras and began an active propaganda for the Home Rule movement. Her personal addresses, her stirring articles (in *The New India* and *The Commonweal*) and the ready-made organisation of the Theosophical Society, all helped her in this great political endeavour. The Home Rule movement spread like wild fire making Mrs. Annie Besant exceedingly popular in an incredibly short time. Even the Moderates, who detested her the most, admitted that she had stirred the country by the spoken

as well as the written word as scarcely any one else could do.”* Her internment in June, 1917 proved a turning point in the history of the movement. Far from discouraging the cry for Home Rule, this action of the Government intensified the demand and induced many moderates, including Motilal Nehru, to throw themselves into this country-wide movement. The fast-growing popularity of Mrs. Annie Besant reached such a pass that she was honoured to preside over the Congress session of 1917. In 1920, she seceded from the Congress and joined the Liberals. But she continued to serve the cause of India till her death.

Mrs. Annie Besant was a political leader of indomitable will, undaunted courage and indefatigable zeal. She was also a very powerful orator and an extremely religious person. Her superb oratory and matchless literary gifts, writes R. C. Majumdar, “enabled her to reach the foremost rank in the Indian politics”.

(II) C. R. Das (1870—1925)

Mr. C.R. Das (Chittaranjan Das) occupies a high place in the history of India's freedom movement. He was a man of great vision and breadth of imagination. He was also a political realist with a high degree of practical common sense and legal acumen. He had courage of conviction which would not allow him to falter even in the face of strongest opposition. For his uncommon love of the mother country and its people he is popularly known as “Desh-bandhu”.

Before Das took to politics in the twenties of this century, he had a princely practice at the Calcutta Bar and was one of the most successful lawyers in the country. He was also noted for his fondness for luxury. But in the wake of his decision to support Gandhiji's programme of non-co-operation, he gave up his practice without a moment's notice, donned *khaddar* and threw himself heart and soul into the movement. He courted prison and left no stone unturned to make the movement a success.

Gandhiji's sudden suspension of non-co-operation movement made him furious. He boldly observed that Gandhiji had committed a great mistake. His action had so demoralised the political workers that it would take many a year to rejurvenate the public enthusiasm. Das did not favour the policy of waiting and watching. He stood for something dynamic and virile in the immediate future. He asked the Congressmen not to boycott the elections

■ Chintamani. C. Y. ; *Indian Politics since the Mutiny*, P. 102.

(as decided earlier) and enter the legislatures with a view to offer 'uniform, continuous and consistent obstruction' to the Government. His scheme was appreciated by many a Congress leader at the Gaya Congress, but it could not meet with a unanimous approval. A section of the Congress led by Shri Rajagopalacharia firmly opposed it. This led to Mr. Das's resignation and he became free to pursue his own programme.

Mr. C. R. Das, with the co-operation of Motilal Nehru and Hakim Ajmal Khan, laid the foundation of the Swarajya Party which decided to contest the ensuing elections. In Bengal the situation was very critical. The electorates were communal and Muslim voters returned only Muslim legislators. There was a great danger from the communal parties, because the Muslims had a majority in that province. Mr. Das at this time made a bold announcement, which removed the apprehensions of the Muslims. This turned the scale in favour of the Congress and it won a large following both in the central and the provincial legislatures. This was, indeed, his great success. Maulana Azad writes, "The way he solved the communal problem of Bengal is memorable and should serve as an example even today."

Mr. Das had a practical bent of mind. He always looked at political questions from the point of view of what was desirable and practicable. He held that if India was to win her freedom through negotiations, she must be prepared to achieve it step by step. He would welcome the grant of even limited power, if he found it helpful to the cause of India's freedom. After the grant of 'dyarchy' in 1919, he rightly predicted that the introduction of 'autonomy' in the provinces would be the next step of the Government. It goes to the credit of his foresight and vision that the Government of India Act, 1935 was framed on the lines, which were conceived by him ten years earlier. Das was indeed a great man of India. Hindu-Muslim unity was dear to his heart. Maulana Azad writes, "If he had not died a premature death, he would have created a new atmosphere in the country."*

(12) Motilal Nehru (1861—1931)

Pandit Motilal Nehru was an eminent national leader of the Gandhian era. He was Gandhiji's leading lieutenant during the non-co-operation movement and one of the founders of the

* Azad : *India Wins Freedom* P. 21.

Swarajya Party. He was also a great freedom fighter of his time, who sacrificed his all at the altar of India's freedom. But his greatest contribution to the mother country was that he gave to the nation in Pandit Jawaharlal Nehru a leader of extra-ordinary stature.

Pandit Motilal Nehru was a prosperous lawyer of Allahabad High Court. His annual income ran into lakhs of rupees. According to Michael Brecher, "In appearance he was very much like a Roman Senator, with a remarkable strength of character and rocklike will. He was not particularly eloquent, but he was lucid, logical, precise, witty and sarcastic. He was affable among friends and guests and an entertaining raconteur. He was, according to all who knew him, a complete man with many-sided interests and activities.*

By temperament and training, Pandit Motilal Nehru recoiled from extreme ways. He was a man of moderate and sober inclinations. He did not appreciate his son's ardent nationalism. At the Surat session, which broke up in disorder, he did not approve of the extremist's attitude though he admired Tilak as a man of deeds. But by and by, he drifted towards extremism. The turning point came in 1917, when following the internment of Mrs. Annie Besant, he became the member of the Home Rule League.

In 1919, Pandit Motilal Nehru was appointed a member of the Punjab Inquiry Committee, which was instituted to report on the unhappy disturbances of Amritsar and other places in the province. Next year he presided over the annual session of the Congress held at Amritsar. In 1921, he gave up his practice and joined the non-co-operation movement. He was arrested in the evening of 6th December at Anand Bhawan and was sentenced to six months' imprisonment.

Gandhiji's abrupt decision to terminate the non-co-operation movement greatly hurt him. He collaborated with C. R. Das in founding the Swarajya Party in 1923 and became its leader in the Central Assembly. His role as a leader of this party in the Assembly was quite praiseworthy. With the help of the independent votes, he succeeded in defeating the Government on several occasions. Soon after his return from Europe in 1927, he participated in the All-Parties Conference held at Delhi and was

* Michael Brecher : *Nehru : A political Biography*. P. 39.

entrusted with the task of drafting a constitution acceptable to all the communities and political parties. It was indeed a very difficult task. Nevertheless, Pandit Motilal succeeded in framing a constitution, which provided the maximum agreement on highly charged issues and also ensured a large measure of harmony among the warring groups, except the Muslim League, then an insignificant minority organisation on the Indian political scene. Some time later, he donated his palatial house Anand Bhawan to the Congress. Thenceforth it was to be known as Swaraj Bhawan—Abode of Freedom.

In 1930, he succeeded his son as Congress President. And despite his failing health, he plunged himself heart and soul into the Civil Disobedience movement. He had to go to Naini Jail. His condition in the jail considerably deteriorated. On the advice of the doctors he was released early in September, 1930, but all this could not be of any use. The disease had gone much too deep. He died in February, 1931 at Lucknow. His death cast a gloom all over the country. Mahatama Gandhi thus spoke on his death: "Motilal's death should be the envy of every patriot. He died after having surrendered his all for the country and up to the very last thinking only of the country. Let us deserve this hero's sacrifice, if not all, at least enough to attain freedom, which he was yearning after and which is within easy grasp now."

(13) *Pandit Madan Mohan Malaviya (1861—1946)*

Pandit Madan Mohan Malaviya was one of the Grand Old Men of Indian Nationalism. He was also a builder of the Banaras Hindu University. His amiable disposition, nobility of character and sincerity of purpose had endeared him to all sections of people. He was, therefore, elected twice the President of the Indian National Congress and thrice of the Hindu Maha Sabha. His varied activities for promoting the social, political and educational progress of the country entitle him to a high place among the makers of modern India.

Pandit Malaviya joined the Indian National Congress in 1886 and remained its member till the end of his life. Though at times he protested against its policies and programme, yet he continued to serve it with unflinching fidelity. Dr. Pattabhai Sitaramayya has beautifully observed: "The Moderates had manned the Congress in their day and abandoned it; Mrs. Besant captured it and

surrendered it. But through storm and sunshine, through good report and evil, Panditji has stuck to it”.

In 1919, Pandit Malaviya was appointed the member of Punjab Inquiry Committee. He worked with unusual interest and indefatigable energy, and brought to light the ugliest facts about the reign of terror in the Punjab. He framed as many as 92 questions for the Imperial Legislative Council alleging specific instances of brutality and oppression. He participated in the All-India Khilafat Conference held at Amritsar. He was also one of the signatories to the address, which was presented to the Viceroy on January 19, 1920. During the non-co-operation movement of 1921 it was he, who arranged a meeting between Lord Reading and Mahatma Gandhi. After the abrupt suspension of the no-co-operation movement, Pandit Madan Mohan Malaviya, in his brilliant address lasting for an hour, favoured the idea of council-entry. He is said to have remarked that the best way of proceeding forward was to enter the councils solidly and then use their position to break the citadel of bureaucracy. In 1929, he had the honour of presiding over the All-India Congress of Students held at Lahore. Next year, he was arrested along with V.J. Patil, Mrs. Kamla Nehru, Shrimati Mani Ben and Shrimati Amrit Kaur, when they led the procession in Bombay in connection with Tilak's death anniversary. He was again arrested during Civil Disobedience, when he tried to enter Delhi in defiance of the Government order. Pandit Madan Mohan Malaviya thus remained associated with the Congress for a number of years and served the nation in hours of difficulties.

Pandit Madan Mohan Malaviya was also an orthodox Hindu. In 1924, when provincial authorities issued instructions prohibiting bathing at the holy junction of Allahabad, he led a procession of the hundred strong *Sadhus* to violate the order. He strongly criticised the Communal Award, which aimed at weakening the strength of the Hindus. At one time, he even made an observation, which irritated the Muslims and gave rise to great misgivings in the minds of the Hindu leaders. He said, “for centuries Muhammadans had been converting Hindus and majority of the Muslims of India were converts. Numerous Christian missionaries were also carrying on a campaign of proselytisation. Therefore, the question of having ■ Hindu Mission for proselytisation had become a very pressing necessity in the situation created in this country by the activities

of the Muslim and Christian Missions.”* He represented the Hindu community of India at the Round Table Conference. He also founded the Nationalist Party with the primary object of safeguarding the interests of the Hindus.

Pandit Malaviya evinced a great interest in the educational progress of the country. He took a leading part in the founding the Banaras Hindu University. It is said that he toured all over the country to collect funds for building the university and was reverently called the ‘Prince of Beggars’. He was a man of independent views and never yielded to the current forces. In 1929, when all the Congressmen resigned their seats in the Assembly, ‘he remained and had a right to remain there, because he had not gone there as a Congressman.

To sum up, Pandit Madan Mohan Malaviya was an outstanding leader of modern India. Though a great representative of the Hindu community and the ablest spokesman of the Mahasabha, he was essentially a nationalist and a patriot to his finger tips. He was also a journalist and a great social worker. Our nation stands indebted to him for his noble contribution towards the founding of the Banaras Hindu University.

(14) *Rabindranath Tagore (1861—1941)*

Rabindranath Tagore was one of the few master minds, whom praise, however high, cannot adequately prize. He was a poet, a novelist, a dramatist, a musician, a short story writer and a painter. Of all these arts, he was master, while his knowledge of many sciences and languages was not superficial but deep. He was also a patriot, a cosmopolitan, an educator and a religious and social reformer. This gifted man attempted many things and he succeeded in all like a master. The range of his achievements is simply bewildering.

Tagore was the son of Maharishi Devindranath. He received his early education at home. When he was about seventeen years old, he was sent to England for higher education. There, he joined the University College, London. Despite his long stay in England, the West had no influence either on his thoughts or on his life. He returned every inch an Indian.

Tagore was, no doubt, great as a poet. But he was also great as a patriot. He had great love for his motherland and took

*Majumdar, R. C. *History of Freedom Movement*. Vol. III P. 262.

pride in her name. He was zealous for the freedom of India. His intense love for his country and country men breathes through every line of his writings. His patriotic song *Jan Gan Mane* has acquired an abiding reputation as our national anthem. He never failed to protest against the wrongs, which were done to his country men during his life time. He protested against the Partition of Bengal very boldly. He relinquished his Knighthood as a measure of protest against Jallianwala Bagh outrage of 1919. He also wrote a strong but dignified letter to the Viceroy "giving voice to the protest of the millions of his countrymen suppressed into a dumb anguish of terror". Besides, his love for the country was as beautiful as his love for humanity. His patriotism never lay in capturing the territories of others. He was proud of the fact that his countrymen did not possess the spirit of aggression. Rabindranath Tagore was a great Indian. He raised the status of his country in the international world.

Rabindranath Tagore was a great humanist. He had a fund of sympathy for the poverty-stricken peasants. He felt restless at the miserable plight of the poor. He never felt tired of hearing their difficulties. He was a true friend of the poor, a real ally of the miserable and a sincere companion of the depressed. He was also a great educationist. He gave India *Vishvabharti*, a great seat of learning. Mr Fazal-ul-Haq paid a glowing tribute to this great son of India in these words : 'It is not enough to say that he is great. He is great as a poet, great as a philosopher, great as an educationist, great as humanitarian, great in his songs and the whole world knows that he not merely wrote or spoke poetry, but also he lived in poetry throughout his life'.

(15) *Subhash Chandra Bose (1895-1945)*

Subhash Chandra Bose, reverently called *Netaji*, was one of the heroes of the Indian national movement. According to R.C. Majumdar, 'Next to Gandhi, the most dominant figure in the struggle for India's freedom was undoubtedly Subhash Chandra Bose'. Verily, this brave son of India fought resolutely for the freedom of India, and by his uncommon sufferings and self-sacrifices brought it nearer by many a year.

Subhash Chandra Bose was a born patriot. From his very early youth he would not tolerate anything, which lowered the prestige of his country or countrymen. As an undergraduate at Calcutta College he led a students' strike and threatened to thrash an

English professor, who had passed some disparaging remarks on Indians. For this act of his he was suspended for nearly two years.

In 1921, Subhash Bose resigned the Indian Civil Service to join Gandhiji's campaign of non-co-operation. But temperamentally and intellectually he and Gandhiji were poles apart. Bose was not greatly influenced by Gandhiji. He had no patience with his non-violence and was irritated by the intricate permutations and combinations of Mahatma's political processes. His political guru was only Deshbandhu Das but, unfortunately, he died in 1925.

Bose worked with the Congress leaders of India from 1921 to 1939. During this period of about eighteen years he took an active part in the Indian politics. In 1921, he plunged into the non-co-operation movement and ably organised the boycott of the Prince of Wales at Calcutta. He was also one of those, who raised a voice of protest against Gandhiji's sudden suspension of the non-co-operation movement. He greatly helped Mr. Das in the organisation of the Swarajya Party. In 1928, he refused to sign the well-known Delhi Manifesto, which provided for acceptance of Dominion Status and Congress participation in the Round-Table Conference. He was not in favour of the Congress decision to accept the office in 1937. He had frankly told the right wing leaders that the formation of ministries by the Congress would not improve its position in the fight against the new constitution (Act of 1935).

Subhash was elected President of the Congress in 1938, but he soon came into conflict with the Congress High Command. Contrary to the latter's well-known wishes, he challenged the official candidate Pattabhai Sitaramayya for the presidency of the next annual session (at Tripuri) and emerged triumphant as President for the second successive year. His triumph was, however, short lived. His rebellious attitude compelled the Congress Executive to take a disciplinary action against him. In August, 1939 the Congress Working Committee passed a resolution declaring Bose ineligible for any elective office for the next three years. Bose, thereupon, seceded from the Congress and formed Forward Bloc with a view to carry on propaganda in the country on his own lines.

At the outbreak of the Second World War, Subhash Chandra Bose started a campaign of active opposition to the war efforts. His

activities soon led to his internment, his residence being guarded by two policemen. Since Subhash was determined to take advantage of the opportunity offered by war, he did not like to remain as a prisoner in his own bungalow. He managed to run away from his home in the guise of a *pathan* and reached Peshawar. From there he went to Afghanistan and thence to Germany. It was only on 26th of January 1941 that the Government came to know of his escape from India. For over a year, nothing was heard about him. People were at last set at rest, when a speech by him suddenly came over the Berlin Radio.

Bose regarded British defeat as India's opportunity. He had no qualms about his allies provided their help enabled him to free his mother country. According to Frank Moraes, "In this he emulated Winston Churchill, who about the same time was declaring that he was willing to shake hands with the devil, if it meant England's salvation." Convinced as such, Bose invoked the aid of the Germans and Japanese for freeing his mother country. He also organised the Indian National Army. His soldiers fought successfully against the much-praised Negro-troops in the British army and inflicted a defeat upon them at Kaladan. Thereafter, the Indian soldiers captured Mowdok. But with the withdrawal of the Japanese from Mowdok, the situation took a turn for the worse. The Indians suffered a very devastating defeat in Imphal. In August 1945, Subhash Bose died in an aeroplane accident and the I.N.A. collapsed.

Netaji's role in the fight of India's freedom was, indeed, very brilliant. He held the cause of the country very dear. His readiness to associate with Fascism and Nazism for emancipating his motherland from the foreign yoke bespeaks of his deep-rooted patriotism. According to R. C. Majumdar, "It is the greatest tribute to Subhash Bose as the fighter for India's freedom that the British recognised him as their worst enemy."

(16) Mahatma Gandhi (1869—1948)

Mohandas Karamchand Gandhi, revered throughout the land as 'Father of the Nation', was the greatest son of modern India. He was not only a unique politician, but was also a mystic, a saint, a thinker and a social worker. According to J.H. Holmes, "Gandhi is great among all the great of the ages past. He is great with Alfred, Wallace, Washington, Lafayette as a nation builder. He is great with Clarkson, Wilberforce, Garrison, Lincoln, as an emancipator of the enslaved. He ranks with St. Francis, Thoreau, Tolstoy

as a teacher of non-violence. He holds his place with Buddha, Jesus, Zoroaster as one of the spiritual prophets of all times." This great man, indeed, achieved things beyond the reach and range of all but a few of the greatest characters of history. He found chaos and gave order : found timidity and left courage ; found divisions and built a nation ; found frustration and created a destiny ; broke the chains of an imperial power without subterfuge and might of armed forces. More than this no man has done or could do.*

Early career

Gandhi was born on October 2, 1869 at Porbandar, Kathiawar, a part of the then Bombay Presidency. His father Karamchand was the Prime Minister of the small state of Rajkot. His mother Putlibai was a very pious and devout woman, who would not take food without first offering her daily prayers. The young Gandhi was an ordinary boy. He was physically weak, timid and self-conscious. He was neither active in his movements nor bright in his studies. His boyhood was, therefore, uneventful.

At the age of seven Mohandas was betrothed to a well-known merchant's daughter named Kasturbai. He married her, when he was hardly thirteen and had not yet passed the Entrance Examination. He completed his university studies at the age of nineteen and then proceeded to London to study for the Bar at the Inner Temple. Before he left India, his mother made him take three vows—to live a celibate life while in England, to abstain from wine and to abstain from meat.

Gandhi arrived in London in September, 1888. After overcoming the initial difficulty of food, he set about making himself an Englishman. He purchased costly clothes, joined a dancing class and even took lessons in music in order to learn the rhythm. But after a few months he realised the futility of his endeavour. So, he gave up the idea, settled down to hard work and led a strictly regulated life. During his stay in London he got a copy of the Bible from a friend and read it diligently. He also made acquaintance with some members of the Theosophical Society (Madame Blavatsky and Mrs. Annie Besant) and their association stimulated in him a desire to study Hinduism earnestly. Gandhi spent two years of his life in London, but it was a passing phase of his life. These years provided him with a legal training but did not have any lasting imprint on his

*Munshi, K.M. ; *The Master*. P. 27.

character, thought-process or way of life. To quote Michael Brecher, "He returned to India in 1891, basically unchanged, entirely an Indian, in no sense an Englishman." Besides, Gandhi's home-coming was sad. His mother had died, while he was in England and news had been withheld from him, so as not to upset him in a foreign land.

Activities in South Africa (Experiment with Satyagraha)

After a few years at the Bar, first at Rajkot and then at Bombay, Gandhi had an offer from a merchant to represent him in a complicated property case in South Africa. It was just a year's contract, first class return fare and £ 105 as fee. Gandhi gladly accepted the offer and left Bombay in 1893, hoping to return after a year. But he stayed there for almost twenty years. Gandhi's stay in South Africa was very significant. It was the formative period of his moral and political life. It was there that he experimented successfully with his novel method of political action, *Satyagraha* or non-violent non-co-operation, a technique which later on revolutionized Indian politics and galvanized millions into action against the British *Raj*. It was there that he came into contact with Tolstoy and with the imperishable truth in the teachings of Christ. It was also in South Africa that he developed a confidence in his own power of leading a struggle.

Soon after his arrival in South Africa, Gandhi found that the Indians over there were treated with little or no respect. They had to undergo great sufferings and were subjected to insults at every turn. Gandhi could not tolerate this injustice to his countrymen. He made up his mind to alleviate their misery. He worked unremittingly : he organised meetings to make his countrymen aware of their rights, he drew up petitions ; he wrote to the Colonial Secretary in England protesting against the inhuman treatment that was meted out to Indians ; he collected funds ; he founded a paper called *The Indian Opinion* ; he attended to the sick and needy in his community. In 1906, when the Government of Transvaal enacted the Asiatic Registration Act, Gandhi faced the situation with his *Satyagraha* movement. He led a march of truth against untruth, of justice against injustice, of non-violence against violence. During this struggle many died as martyrs and many more went to prison. But ultimately his efforts were crowned with success. The brute force had to bow down before the soul force. In 1914, the hated Asiatic Act was repealed, the poll-tax abolished and Indian marriages were recognised. The Indians on

their part agreed to restricted immigration.

After Gandhi had succeeded in his mission, he told the Indians there of his desire to go back to India. No one liked the idea. Since Gandhi was adamant, they ultimately gave in. The farewell party brought tears in the eyes of many. Gandhi himself was deeply moved.

Entrance in Indian politics

Gandhi returned to India in 1915. The First World War was then in progress. He was at that time the greatest friend of the British. He came out as the best recruiting servant of Britain in India. He went about from place to place and advised his countrymen to help Britain. Some Hindu and Muslim politicians, who knew what the war in Europe was about, were amused by Mr. Gandhi's antics ; they did not take him seriously. Besides, Gandhi was then not an important leader of India. Bal Gangadhar Tilak, a man of extraordinary energy with a great mind, strong will and a high character, held the Indian political field.

After having completed his tour of India, Gandhi settled down at Ahmedabad. He founded his *Satyagraha Ashram* in a small village near the city. He then turned to the country side as a champion of the oppressed peasants. He took up the cause of the Indigo plantation workers and came out triumphant. He led the agrarian struggle in Gujrat and roused the peasants from deep-rooted apathy. He also intervened in several labour disputes, thus gradually refining the methods of boycott and the technique of non-violence by which he had received his early results. These efforts of Gandhi heralded the arrival of a new force in Indian politics.

In 1919, when the Rowlatt Bills made their ugly appearance Gandhi responded with a direct challenge. He requested the Viceroy to withdraw his assent from the 'Black Bills.' When his appeal failed to yield any result, Gandhi formed a *Satyagraha Society*, whose members were pledged to disobey the law as a symbol of passive resistance. He also successfully organised a country-wide *hartal* on April 6, 1919. He was subsequently appointed the member of the Congress Committee of Inquiry into the Punjab disturbances. It was, however, at the Congress session of 1920 that Gandhi was acknowledged the leader of the Congress and his resolution on non-co-operation was passed by majority of 1866 against 88. Once acknowledged the leader of the Congress,

he continued to dominate the Indian politics till he met a martyr's death in 1948. By his death, writes Justice P. B. Gajendragadkar, Gandhiji joined the celestial circle in which Jesus Christ and Buddha shine.*

His role in India's liberation

Gandhi's contribution to India's liberation can never be over-emphasised. According to J.H. Holmes, "To him more than any other Indian can be attributed the independence of India, when this independence is at last won". Verily, this architect of India's freedom rendered meritorious services to the national struggle. He enjoyed a position of unique influence and leadership between 1920 and 1947. According to Michael Brecher, "All the outstanding personalities of the national movement were moulded by him after 1920 and came under his spell. They sought his advice, in both personal and political matters, and usually abided by his will. Indeed, there was an ingrained habit of leaving the major decisions to him". Nehru frankly expressed in a letter to Gandhiji early in 1947 : "I know that we must learn to rely upon ourselves and not run to you for help on every occasion. But we have got into the bad habit, and we do often feel that if you have been easier of access our difficulties would have been less."

During the period extending from 1920 to 1947, which is generally described as 'Gandhian Era,' Gandhi not only wielded a paramount influence in the country but also worked unremittingly. He skilfully led the national struggle, gave it a new turn and imparted to it a new force, character and meaning. He played a great role in rousing the political consciousness of the masses. It was also he under whose leadership the Indian National Congress developed into a fighting machine and revolutionary organisation, non-violent in character but of tremendous strength and potentiality. Convinced of the fact that India could win all by moral force, Gandhi made it the basis of his national struggle. To quote C.E.M. Joad, "It was by moral force that Gandhi induced thousands to besiege the gaols, demanding that they should be arrested ; it was by moral force that he caused thousands to allow themselves to be beaten to pulp without lifting a hand in self-defence." The

*The pen picture of Gandhiji, as given by Justice Ganjendragadkar, is worth mentioning here : "Small in physical stature, frail in appearance, eyes both piercing and kindly, heart full of compassion and the love for human race, style of speech lucid and clear, writings simple like the Bible, will invincible, determination to fight evil rock-like—Gandhiji ■■■ a giant among men."

victory of this moral force over the physical force and the consequent emancipation of India from foreign yoke was, indeed, his great and unique achievement. Ranjiv Shahani writes: "No one in modern times had succeeded in pushing the British out of their strongholds. Napoleon tried it and failed. Hitler tried it and failed even more miserably. Gandhi alone, without shedding a drop of blood, made the British withdraw. In this respect, and this alone, he was a politician without an equal."

His launching of the civil disobedience campaign, his calling it off at the dictates of his conscience, his negotiations and interviews with the British authorities, his participation in the Round-Table Conference, his Dandi March and subsequent Salt Law violation, his determined opposition to the Cripps Proposals, his slogan of 'Quit India' and 'Do or Die' statement, his settlements and pacts with various persons or parties—these and many other great events of this era—abundantly bespeak of Gandhi's role in the freedom movement. His repeated arrests and long-term imprisonments, his fasts over various political issues, his risky adventures for Hindu-Muslim unity and his genuine renunciation of material comforts—form no less glorious a chapter of the history of his services to the cause of national freedom. Mr. K.M. Panikkar beautifully sums up Gandhi's contribution to the liberation of India in these words: "Mahatma Gandhiji's contribution to the achievement of India's independence is universally recognized. It is he who converted Indian nationalism, a movement confined to intellectual classes, into a revolutionary mass struggle. It is he who developed its organisation and discipline and provided it with a method of effective action. Beyond all this, it is to his credit that he endowed it with an urge for social justice, with a passion for equality and aroused the conscience of India to the conditions of the depressed classes and other unprivileged sections of the community. The emphasis on rural India and the moral fervour, which he imparted to the national movement in respect of the uplift of the untouchables were also important aspects of Gandhian movement. The Mahatma's wide sense of tolerance and his consistently friendly attitude to the British people, while denouncing the British Government as satanic, also left their mark on the Indian national struggle."*

*Panikkar, K.M. *The Foundations of New India*. P. 179—180.

Gandhi and communal harmony

Mahatma Gandhi was a true apostle of communal harmony. He wanted his countrymen to lead a peaceful and happy life. In the time of communal tension or friction, he always tried to restore harmony, even at the risk of his own life. Between 1922 and 1927, when a number of communal riots occurred in the bigger cities of northern India, Gandhi vehemently protested against these outbreaks and urged non-violence on both sides. He was appalled at the news of Kohat tragedy and undertook a fast for 21 days in order to prevent the *plague* from spreading. In 1946-47, when communal madness swept over the country, Gandhi again came forward as champion of communal harmony. He went on a long tour of Noakhali, addressing small groups at every village, bringing the message of communal harmony and appealing to their sanity. His soothing words had the desired effect on the hearts of the people ; there was no recrimination.

Despite the fact that Hindu-Muslim unity was his sheet anchor, Gandhi had the mortification of witnessing with his own eyes the most sanguinary conflicts between the two communities. To quote Dr. Ishwari Prasad, "He had struggled for unity. What he lived to see was disunity. He went to the Muslims as a friend, they regarded him as a hypocrite. He exhorted his co-religionists to be generous and humane, they regarded him as pro-Muslim and the principal exponent of the appeasement policy, which had led to disastrous consequences. History knows of no greater irony."* His transparent sincerity at last bore fruit. Both the Hindus and the Muslims had to revise their erroneous opinion. Gandhi continued his struggle to establish communal harmony and gave his life as the last sacrifice of the martyr to his cause.

Gandhi—His sense of social justice

Mahatma Gandhi had a burning sense of social justice. He could not stand the deplorable condition of the depressed classes. He was deeply moved by the ill-treatment to which they were subjected. To him untouchability was a great sin. Moreover, he held the view that an individual life not dedicated to the righteous cause of helping the poor is lived in vain. He, therefore, came forward as champion of the *Daridra-Naryan* or the down-trodden. He raised a voice of protest against this social injustice and made every possible sacrifice to safeguard the interests of the untouchables. Like a humble penitent he identified himself with the oppressed and lived by preference in *Harijan* colonies. He advised the Hindus to give up their prejudices against the *Harijans* and throw open

*Dr. Ishwari Prasad *History of Modern India*. P. 478.

their temples to the latter. He also started a paper, *The Harijan*, in which he wrote against untouchability. These efforts of Mahatma Gandhi brought a sense of social justice in our national life and thereby laid the foundations of new India. Mr. K.M. Panikkar writes, "If untouchability has been abolished and its practice in every form made a penal offence, if the so-called untouchables of yesterday share effective political power both in the Centre and in the States, if special provision is made for their educational, economic and social advancement, it is undoubtedly due to the great impetus that the Mahatma gave to the sense of social justice as a basis for national life."*

Gandhi and Village Swaraj

Gandhi was not in favour of the growth of cities. He considered it an evil thing, unfortunate for mankind and the world and certainly unfortunate for India. In an interview with foreign correspondents at Mussoorie in 1946 he said : "The British have exploited India through its cities. The latter have exploited the villages. The blood of the villages is the cement with which the edifice of the cities is built. I want the blood that is today inflating the arteries of the cities to run once again in the blood vessels of the villages". Convinced as such, Gandhi insisted that real Swaraj can only be ■ Swaraj for the villages. Writing in *The Harijan* on July 26, 1942, he expressed his idea of village Swaraj in these words : "My idea of village Swaraj is that of a complete republic, independent of its neighbours for its own vital wants and yet inter-dependent for many others in which dependence is a necessity. Thus, every village's first concern will be to grow its own food crops and cotton for its cloth. It should have a reserve for its cattle, recreation and playgrounds for adults and children...The village will maintain a village theatre, school, public hall. It will have its own water-works ensuring its own water supply. This can be done through controlled wells or tanks. Education will be compulsory up to the final basic course. As far as possible every activity will be conducted on the co-operative basis. There will be compulsory service for village guards, who will be selected by rotation from the village. The government of the village will be conducted by the *Panchayat* of five persons annually elected by the adult villagers, male and female, possessing minimum prescribed qualifications. The *Panchayat* will be the legislative, judiciary and executive combined to operate for its year of office."

*Panikkar, K.M : *The Foundations of New India*. P. 184.

Gandhi and Khadi

Gandhi was a strong advocate of *Khadi*, which, to him, meant more than coarse cloth. He often said, “*Khadi* must be taken with all its implications. It means a wholesale *Swadeshi* mentality, a determination to find all the necessities of life in India and that through the labour and intellect of the villagers”. Convinced as such, Gandhi did not favour the establishment of large-scale industries or wholesale industrialisation. He stood for the development of cottage industries and handicraft production. An important item of his ‘constructive programme’ was, therefore, the popularisation of *Khadi* or hand-spun cloth. He also asked the Congressmen to wear *Khadi* and devote their lives to the betterment of Indian villages. It was under his influence that *Khadi*-clad workers carried on their labour of love among untouchables, introduced into the villages new ideas of sanitation, fought social prejudices and transformed the outlook of the Indian masses. Those who objected to Gandhi’s going back to hand-spinning when, obviously, the future lay in industrialisation, Gandhi thus replied : “This means a reversal of existing process. That is to say, that instead of half-a-dozen cities of India and Great Britain living on the exploitation and the ruin of 700,000 villages of India, the latter will be self-contained..... This needs a revolutionary change in the mentality and tastes of many... It vitally touches the life of every single Indian, makes him feel aglow with the possession of a power that has lain hidden within himself and makes him proud of his identity with every drop of the ocean of Indian humanity, of its economic freedom and equality and, therefore, ultimately the livery of India’s freedom.”

Gandhi—His new educational scheme

Gandhi rightly believed that the alien system of education, which had been forced on India, could not solve her problems. It could not bridge the gap between the towns and the villages. In his effort to create a basic harmony between the educated classes and the villagers, he devised his own scheme of education. This scheme, as Gandhi himself stated, was a scheme of ‘rural national education through village handicrafts.’ Its object was to educate village children in the villages so as to draw out all their faculties through some selected village handicrafts in an atmosphere free from superimposed restrictions and interference. In 1943, when he came out of his last detention, he enlarged the scope of his

original idea. He observed : "I have been thinking hard during the detention over the possibilities of *Nai Talim* (New Education) ; we must not rest content with our present achievements. We must penetrate the homes of the children. We must educate their parents. Basic education must become literally education for life".

Commenting upon the advantages of his new scheme, Gandhi said, "My plan to impart primary education through the village handicrafts like spinning and carding, is thus conceived as the spearhead of a silent social revolution fraught with the most far-reaching consequences. It will provide a healthy and moral basis for relationship between the city and the village, and thus go a long way towards eradicating some of the worst evils of the present social insecurity and poisoned relationship between the classes. It will check the progressive decay of our villages and lay the foundation of juster social order in which there is no unnatural division between the 'haves' and 'have-nots' and everybody is assured of a living wage and the right to freedom."*

Gandhi's contribution to Indian Politics

Gandhi made a very sound and significant contribution to the Indian politics. He gave our countrymen his two *ideas of non-violence and non-co-operation which together made his great principle of Satyagraha*. The Mahatma advocated the doctrine of non-violence because he held that "non-violence is infinitely superior to violence, forgiveness is more manly than punishment." His non-violence does not commend acquiescence in evil or submission to injustice. It teaches to resist evil by refusing to co-operate with it. It requires fortitude and discipline. In his article on the doctrine of non-violence published in *Young India* on August 11, 1920, he wrote : "Non-violence in its dynamic condition means conscious suffering. It does not mean submission to the evil-doer, but it means the putting of one's whole soul against the will of the tyrant. Working under this law of our being, it is possible for a single individual to defy the whole might of an unjust empire to save his honour, his religion, his soul and lay the foundation for that empire's fall or regeneration." In this context Dr. Rajendra Prasad writes : "To my mind his greatest contribution to Indian politics and perhaps to suffering humanity in the world at large lies in the unique method,

which he has prescribed and employed for fighting the wrongs. He has taught us how it is possible for us to successfully fight the mighty British Empire without arms; he has given us and the world moral substitute for war.”

Some critics of Gandhi dismiss ‘non-violence’ as an excuse for cowardice or weakness. But it is not so. Non-violence is the expression of strength. Only those, who have the qualities of valour, suffering and the spirit of sacrifice, can restrain themselves and not resort to the use of arms. Besides, Gandhi’s non-violence is an active force, the weapon not of the weak but of the brave.

Gandhi was very frank and truthful even in politics. He knew no duplicity. There was no secrecy about his plans, nothing shifting or mean about his methods. According to Dr. Ishwari Prasad, “History records few instances of an inveterate political fighter intimating to the enemy in advance the manner of his fight and the strategy he was going to employ”. His truthfulness added strength to his cause and even his bitterest enemies were touched by his sincerity and devotion. Dr. Rajendra Prasad writes : “Gandhi has placed truth on its pedestal of glory even in politics, no matter how harmful its effect appears to be at the moment.” His truthfulness also made him fearless in his fight.

Gandhi firmly believed that there is *an intimate relation between religion and politics*. Politics without religion is sham. Those, who hold that religion has nothing to do with politics, do not understand what religion means. On one occasion he observed : “For me there are no politics devoid of religion. Politics bereft of religion are a death trap, because they kill the soul”. Convinced as such, he always *stressed the ethical side of the politics and placed immense value on morality in the pursuit of political objective*, so much so that it was more important than the goals themselves. A classical example of his ethical approach to politics is one, when he forced the Indian Government to transfer 550 million rupees to which Pakistan had a moral claim under the Partition Agreement.* Thus, moral considerations always dictated his decisions.

* Under the Partition Agreement India was to pay 550 million rupees to Pakistan. The Indian Government decided to postpone this payment on the plea that the transfer of this large sum at the time would aid Pakistan in its war against India, then in full swing in Kashmir. The intent was to withhold payment only until the end of the military campaign, not indefinitely. Gandhi considered it to be an immoral and indefensible act. He forced the Indian Government to make the payment forthwith.

Unlike many other politicians of the world, Gandhi *attached greater importance to means than to ends*. He held that the latter is subservient to the former. If the means are ignoble and immoral, the end suffers in moral worth. A good end can never be achieved by immoral means. He once wrote : "I feel that our progress will be in the exact proportion to the purity of means". He, therefore, never justified recourse to means, which were not pure and immaculate.

Another contribution of Gandhi, to the Indian politics was that *he made his countrymen fearless and bold. He gave them sense of personal dignity and self-respect*. Before his entrance into the Indian politics, the masses were afraid of the officials, the C. I. D. and the jails. Their great concern was safety—safety first and safety last. Even the politicians were not bold enough to expose the evils of British administration. Much to his credit, Gandhi gave to the Indian people, particularly the masses, a new sense of pride and backbone. He taught them to walk erect. He shed their fear-complex.

Mahatma Gandhi defined India in terms of peasants and workers and thus simultaneously broadened the basis of the Congress party and the national struggle. To put in other words, Gandhi carried the national awakening to the masses and thus made his movement a mass movement. Before his advent on the Indian political stage, the Congress was largely an association of middle class intelligentsia. But Gandhi transformed it into a nation-wide mass organisation capable of penetrating into the grass roots, to the villages, the heart of Indian society. This change in the character of the Indian National Congress, not unnaturally, brought about a change in the political movement and added to its popular appeal and vigour.

National Government and Gandhian Principles in practice

Our national government has been very anxious to put the Gandhian principles into practice. It has, no doubt, followed some of them very faithfully. But its achievements in certain respects appear to be based on other than Gandhian principles.

In the first instance, Mahatma Gandhi was strongly opposed to the industrialised society. He stood for handicraft industry. But India has set for herself the rapid large-scale industrialisation as her ideal. Her giant steel works (at Bhilai, Durgapur, Rourkela)

and other enterprises in the public sector, therefore, represent the very opposite of Gandhian teaching.

Secondly, Gandhi did not favour the growth of the big cities. He looked upon them as the handiwork of the devil. But our national government, in the period of India's independence, has developed many cities. Great ports like Kandla have been built up from marshes. Townships like Nilokheri and Faridabad have been created to accommodate refugees from Pakistan. Durgapur, Bhilai, Chittaranjan and Rourkela have been developed as great industrial centres. New capital cities like Chandigarh and Bhubaneswar have come into being. The population of Delhi has jumped from 7 lakhs to 38 lakhs. And strangely enough, our Government is actively encouraging the development of cities and townships all over India.

Thirdly, Gandhi was a strong advocate of *ahimsa* or non-violence. But now no one concerned with the politics of India talks of *ahimsa*. On the other hand, India is straining every nerve to arm herself to the teeth. This change in the policy is mainly due to the growth of conditions on her borders.*

Fourthly, the Mahatma did not favour too much interference of the government with the individual's activities. He liked the government, which governed the least. But the new State has extended its functions to such an extent that they cover almost every sphere of human interest. Apart from its economic planning, social legislation, community development, educational policies, it has even tried to organize the *Sadhus*, *sanyasis*, who have renounced the world. According to K.M. Panikkar, "Nowhere has the departure from the Gandhian ideal been so great as in the development of state activities."

Fifthly, Mahatma Gandhi resorted to fasting as a political weapon, when he considered that moral issues were at stake. But now in the post-independence period, fast is being used to secure even those political ends, which have no moral issues behind them.

*"The growth of Pakistan's military power as a result of her alliance with America and the supply of up-to-date arms and equipment and her threatening attitude in regard to Kashmir rendered it necessary that India should also develop her defence forces adequately. Similarly the gradual build-up of Chinese military forces on India's northern border and her recent aggression, has also created problem of defence." *Panikkar. K.M : The Foundations of New India. P. 181.*

Sixthly, Gandhi was a strong advocate of prohibition. In his life-time the elimination of alcoholic drinks was an important plank in all programmes of the Indian National Congress. But now no serious attempt on a country-wide basis has been made in this direction. The States in which prohibition was introduced in the first enthusiasm are carrying on with it even now.

Seventhly, the organisation of the villages is also not in complete conformity with the Gandhian ideal. Gandhi thought of village as an independent unit. But in the *Panchayati raj*, which Nehru's Government has introduced, the village is a constituent unit, subordinate to higher organisations. Moreover, the *Panchayati raj* recommended by Gandhi had profound meaning and implications. But the present *Panchayati raj* is a thing of the bureaucracy open to all corrupting influences. There are just a few areas in India like Gujrat, where *Panchayati raj* is something of a reality in the life of the people.

Eighthly, Gandhi always insisted on right means to achieve right ends. But our leaders are using undemocratic, unconstitutional and immoral methods to create new order on democratic foundations. Moreover, they have forsaken the path of simplicity, austerity and integrity.

(17) *Sardar Vallabhbhai Patel (1875—1950)*

Sardar Vallabhbhai Patel, the celebrated Iron Man of India, was an indomitable fighter for India's freedom. He was also the builder and consolidator of new India. An apostle of reality, a statesman-patriot, an organising genius and man of decision, he has left a deep impress on the affairs of India. On the death of this valiant son of India, *The Manchester Guardian* from London wrote: "Without Patel Gandhi's idea would have had less practical influence and Nehru's idealism less scope. Patel was not only the organiser of the fight for freedom but also the architect of the new State, when the fight was over. The same man is seldom successful as rebel and statesman. Sardar Patel was the exception."

Vallabhbhai Patel was a native of Gujrat, the province to which Mahatma Gandhi belonged. He was born in October, 1875. His father Jhaverbhai was one of the heroes, who had fought against the British under the banner of Rani Laxmibai of Jhansi, pledged to drive out the British from India. Vallabhbhai received his high school education at Nadiad and matriculated in 1897 at the age of twenty two. Thereafter, he qualified himself as a district

pleader and started his independent practice at Godhra. Having saved some money from his lucrative practice, he went to England for higher studies in law and returned to India in 1913 as a full-fledged barrister. He started his practice at Ahmedabad and very soon became an eminent lawyer.

In his early forties Vallabhbhai Patel came under the spell of Gandhiji's personality. He worked as his principal lieutenant in the peasant *Satyagraha* at Khera against the unjust and arbitrary demands of the Government of Bombay. His success in this struggle brought him fame, popularity and self-confidence. It also made him more enthusiastic for the public work. In 1923, he was elected chairman of the Ahmedabad Municipality and he rendered meritorious services to the people of the city. He shot into all-India fame and prominence in 1928, when he organised the well-known Bardoli *Satyagraha* and forced the Bombay Government to reduce the proposed tax-increase from 22 to 7 per cent. In appreciation of his services in this struggle, the peasants of Bardoli gave him the honorary title of *Sardar* (leader), and Indian nationalists applauded his victory. His fame spread throughout the sub-continent and the Sardar became a prominent figure in the Congress elite. To quote K.L. Panjabi "The Sardar of Bardoli emerged from this struggle the Sardar of India."

During the next nineteen years of the national struggle, Patel remained a very important man in the country's political life. He commanded a great influence and power in the Congress and was elected its President in 1931. He held this office for the next three years. After Jamna Lal Bijaj, he was made the treasurer of the Congress, for he inspired confidence among the donors and terror among the provincial and district committees, which had to render strict accounts of expenditure. Later, he became the President of the Parliamentary Board. He had an effective voice in the selection of the candidates for the provincial legislatures and also in the enforcement of discipline in the ministries. He took disciplinary action against Dr. Khare, the Chief Minister of the Central provinces. He asked the Bombay Ministry to fulfil the understanding, which the Congress had given to the peasants of that province. According to it the Congress Government in Bombay was to return to the peasants (free of cost) all those lands, which had been forfeited and sold by the Government during the civil disobedience movement. He brought Mr. Nariman to knees. Thus, Vallabhbhai

Patel, as he himself said, "used the Congress-roller to crush pebbles and stones in its path." Sardar also played an important role in the Interim Government and was one of the two Congress-members of the Partition Committee. According to Maulana Azad it was Sardar Patel, who first accepted the Viceroy's idea of partition of India.

Patel's contributions during the post-independence period were more significant to mark him as one of the modern India's men of destiny. By his uncommon wisdom and diplomatic skill, he successfully brought about the integration of 554 princely states into the Union of India. And this was, indeed, his great achievement. He himself commented with justifiable pride: "The great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence, had been consummated."* According to K.L. Panjabi, "Sardar had reason to be glorified that he had laid the foundations of an integrated India, wherein regional loyalties had been over-shadowed by the desire to build a strong and united nation. As a result of Partition, India had lost 3·6 lakh square miles with a population of 81·5 millions. With the integration of States, she acquired 5 lakh square miles of territory with a population of 81·5 millions. Artificial barriers between the States and the rest of India were demolished. Almost overnight, the superstructure of the modern system of Government was introduced in these States."† On the death of Patel, Lord Mountbatten stated: "His work as incharge of the Ministry of States.....will go down in history, for he handled one of the most difficult problems, which ever confronted any statesman, with a high degree of understanding and regard for the Indian Princes". The *London Times* wrote: "His achievement of the integration of the Indian States would rank with that of Bismarck and probably higher."

As Minister of Home Affairs, also, Patel rendered meritorious services to the mother country. When he took charge of the Home Ministry, the administration was in a deplorable condition. The communal riots and strain of Partition had brought it on to the verge of breakdown. By his tact, sympathy, firmness and other qualities

*Menon : *The Story of the integration of the Indian States.*

†Panjabi, K.L. ; *The Indomitable Sardar.* P. 180.

of head and heart, he created law and order in the country and set the administration on a sound footing. He kept the subversive forces under check and maintained effective control of the Centre over the State Governments.

Sardar Vallabhbhai Patel was a great son of India, whose main mission in life had been to make a strong and unified India. He was a man of iron will, clear about his objectives and resolute in his actions. He was also cool and calculating, never permitting his heart to rule his head. Though he was a staunch Hindu by upbringing and convictions, yet, he was a strong nationalist. He was not at all an enemy of the Muslims. He was, of course, enemy of all fanatics whether Hindus or Muslims. Besides, Patel was the realist *par excellence* and a master of party machine. According to Michael Brecher, "He was short and robust, slow of movement, yet dignified in his ample *dhoti*. Indeed, in appearance and manner he resembled an elder statesman of ancient Rome. Though he was not devoid of humour, the Sardar's large, oval face generally wore a grave expression. He was impassive, cold, stern and seemingly aloof and unresponsive. It was difficult for all but a few confidants to penetrate the mask of calmness, which he retained to the end of his life. His mental process, his strength of character and his political accumen were formidable".* Patel died in 1950.

(18) *Maulana Abul Kalam Azad (1888—1958)*

Maulana Abul Kalam Azad, the dean of nationalist Muslims, has been a unique figure in the Indian political life for two generations. Like Gandhi and Patel, he was also a giant of the nationalist movement. In the words of J.B. Kriplani, "He was a great divine, a great scholar, a great orator in Urdu, a great fighter for national freedom. With all his fervent love for the country, he was an internationalist at the core. Great as was his contribution to the freedom fight, his memory will live more as a harmonious personality, full of knowledge and wisdom".†

Maulana Azad was born in Mecca in November, 1888. His father Maulana Khair-ud-din was originally an Indian, but had migrated to that holy city of Arab at the young age of twenty-

*Michael Brecher : *Nehru, A Political Biography*. P. 394.

†Memorial volume. P. 36.

five. He had settled there and had also married the daughter of a great scholar of Medina. Khair-ud-din himself also was a scholar of eminence and had a considerable following in India. A few years after Azad's birth he came back to India and settled at Calcutta. Azad had his education at home under the strict control of his father.

During the agitation following the Partition of Bengal, Azad joined the revolutionaries and visited Iraq, Egypt, Syria and Turkey. He also established contacts with the Arab and Turk revolutionaries. On his return to India in 1912, he started his Urdu Weekly *Al Hilal*, which achieved unprecedented popularity within a short time.* The chief reason of its popularity, according to Maulana Azad, was the new tone of strong nationalism preached by it. The Government was disturbed by the success of *Al-Hilal* and tried to crush it by the forfeiture of securities and even Press. When its efforts failed to achieve the desired result, the Government resorted to the Defence of India Regulation and interned Azad in Calcutta. He had to remain in detention at Ranchi till 31st December, 1919.

In 1920, Azad threw himself into Gandhiji's campaign of non-co-operation. He was arrested and sentenced to one year's imprisonment. His political wisdom, patriotic fervour and sacrificial service soon won him a place in the Congress elite, and he was made the President of the Indian National Congress in 1923, a position, which he held for a number of years on different crucial occasions. At the special session at Gaya in 1923 he mediated between the No-changers and Pro-changers and was able to effect a temporary reconciliation.

Maulana's subsequent career was marked by the great efforts and sacrifices, which he made in the national cause as a colleague and associate of Mahatma Gandhi. During the critical years of Second World War, Maulana skilfully conducted negotiations with Sir Stafford Cripps in 1942 and with Lord Wavell at the Simla Conference of 1945. He was always opposed to the League communalism but he never attacked any of its leaders. Rather, he was very courteous in his reference to them, in spite of the fact that they continued to abuse him in season and out of season. He was strongly opposed to the partition of India and was greatly mortified, when it became an accomplished fact. But, much to his credit as a true nationalist, he did not give up his faith

* *Al-Hilal* reached a circulation of 26,000 copies per week, a figure, which was then unheard of in Urdu journalism.

in Congress leadership. He even continued to show the right path to the 40 million Muslims, who were left in India.

Maulana Abul Kalam Azad remained the Minister of Education in the Government of India from January 1947 till the last day of his life, 22nd, February 1958. During this period of about eleven years he took many momentous measures in the field of education and national reconstruction. The appointment of the University Education Commission (1948) with their report of 1949, the appointment of the Secondary Education Commission (1952) with their report of 1953, the reorganisation of All India Council for Technical Education, the chain of laboratories of scientific research established during the period; the establishment of Kharagpur Institute of Higher Technology, the rapid development of Indian Institute of Science, the establishment of University Grants Commission with considerable financial resources—are some of his achievements as our educational leader.

Maulana Azad was a staunch nationalist.* He always stood for national unity and communal harmony. He made no difference between Hindu and Muslim, Sikh and Christian. He felt that all of them belonged to one country. Besides being a politician and a great nationalist, the Maulana was also an eminent scholar. His conversations were full of quotations from the Arabic and the Persian classics. In the words of Saeed Naficy, "Well versed in Islamic studies and the literature of Persian and Arabic languages, he was one of the greatest men of Asia and perhaps the most learned man in the Islamic world. He was a philosopher in the real sense of the term."

Maulana Abul Kalam Azad was a great Indian. He was an embodiment of secular India and an architect of its Independence. His services to the country as a sagacious statesman, an ardent patriot, and a great intellectual are inestimable. On the death of Maulana Azad, S. Radha Krishnan wrote: "There is no doubt that we will not see the like of him again, a great man, a man of stately presence, indomitable courage and fearless behaviour, that is what the Maulana was". Lord Pethick Lawrence, who led the Cabinet Mission in 1946 and had several occasions to meet Azad, the then President of the Congress, thus wrote about him: "He will be mourned as a public servant of high repute, who devoted his great talents to securing the freedom

*"His (Azad's) nationalism is as robust as his faith in Islam". *Gandhi*.

of his country and to building up among her people high traditions of learning and integrity”.

(19) Dr. Rajendra Prasad (1884—1963)

Dr. Rajendra Prasad, the first President of the Indian Union, was the gentleman of Indian politics. He was the true disciple of Mahatma Gandhi and a devoted fighter for national freedom. Simple and unassuming in manners, he was loved and respected all over India for his integrity of character, purity of life and dedication to the service of the country. Dr. Radhakrishnan once styled him as ‘the suffering servant of India’, while Gandhi called him *Ajatashatru*—a man without enemies.

Dr. Rajendra Prasad was born on December 3, 1884 at a village Zeradei in the state of Bihar, but he received his higher education at the Presidency College, Calcutta. He had a brilliant academic career to his credit. He secured first position in the Matriculation Examination of the University and also maintained fairly good positions in the higher examinations. He obtained the degree of Master of Law in first division and started his legal practice at Patna. He joined the Congress in 1911 and was elected member of the All India Congress Committee. During the Champaran struggle in Bihar, he ably assisted Mahatma Gandhi and also became one of his devoted followers. Thereafter, under the instructions of the Mahatma, he helped the British in their war efforts and was one of the members of the official board for recruitment of men to army in Bihar.

In the Congress session of 1920 held at Nagpur, the entire basis of the Indian politics was revolutionised. The Indian National Congress was refashioned along the mass lines. In order to reach the masses in an effective way, Dr. Prasad took up editing of a new Hindi Weekly called the *Desh*. He also organised temperance campaign to hit the revenue of the Government. When Gandhi started his non-violent non-co-operation movement, Prasad threw himself into it and went to prison. In the earthquake of Bihar in 1934, he rendered a great service to the unfortunate sufferers. In 1939, when Subhash Chandra Bose defied the directions of the All India Congress Committee, he did not hesitate to take a firm action against him. He got the Working Committee to disqualify him for holding any elective office in the Congress.

In the Interim Ministry formed in 1946 he was assigned the portfolio of Food and Agriculture. He skilfully handled this difficult

department. He granted substantial subsidies to the poor farmers to dig wells and use better seeds and implements. He also fixed minimum prices of food grains. He wanted to take some measures for the improvement of the cattle-breed, but was soon asked to occupy the office of the Congress President. In 1947, he was unanimously elected the President of the Constituent Assembly. Much to his credit, he ceased to be a partyman and maintained neutral attitude. His impartiality inspired confidence among the members of the minorities and also among those, who differed from the Congress.

Dr. Prasad remained the President of the Indian Union from 1952 to 1962. During these ten years of his office, he showed no dereliction in the discharge of his duties. He carefully watched and served the vital interests of the country. Despite his high position, he was as humble as a mendicant. He was freely accessible to all who wanted to meet him. He reduced his salary by voluntary cuts and accepted to receive Rs. 2,800 instead of Rs. 10,000 per mensem. He never charged the sumptuary allowances fixed by the Constitution and entertained the guests out of his pay.

Dr. Rajendra Prasad was a very noble man. He was deeply religious and non-violent. He believed that for a country like India, with people of diverse religions, languages, and ideologies, non-violence was a dire necessity. He was a prolific writer, who spent the income of his books, totalling Rs. 25,000 a year, on charitable purposes, preferably for the uplift of the women. He was himself very simple in food and dress. He loved neither position nor prestige. He represented everything that is good, lofty and noble in Indian thought and deed. Sarojini Naidu once said of him : "Dr. Prasad is descended spiritually from the Great Buddha, the embodiment of compassion, understanding, sacrifice and love".

(20) Jawaharlal Nehru (1889—1964)

Pandit Jawaharlal Nehru, the illustrious son of India, was one of the few key-figures of our times, whom praise, however high, cannot adequately prize. A member of the Indian Communist Party referred to him as the 'one romantic figure thrown up by the nationalist movement, a sensitive idealist with broad vision, a politician with deep insight into national and international problems, a man with a fine aesthetic sense, a whole man in the

Renaissance conception'. Pandit Nehru was, indeed, a versatile genius, who possessed in him the rare qualities of head and heart. He was a staunch patriot, a great politician, a constructive statesman, a true democrat, a distinguished writer and a resolute fighter for national freedom. He was also a great cosmopolitan, a sincere lover of peace, a symbol of Asia's political awakening and a guardian of morality in international affairs. As the pre-eminent figure in India's era of transition, writes Michael Brecher, 'he bears a comparison with Roosevelt and Churchill, Lenin and Mao, men who towered above their colleagues and guided their people through a period of national crisis. To cap all, Pandit Jawaharlal Nehru was the most effective advocate for all men everywhere and he spent himself in the service of all humanity. It was aptly remarked in the *Lok Sabha's* tributes that Nehru 'belonged to all mankind as much as to India'.

In spite of his cosmopolitanism and love of humanity, Nehru's first and great love was India and the Indian people. Some years ago, in a pensive mood about the future, he proposed the following epitaph for himself: ".....if any people choose to think of me, then I like them to say: "There was a man who, with all his mind and heart loved the Indian people. And they, in turn, were indulgent to him and gave him of their love most abundantly and extravagantly". This great son of India had, indeed, an intense love for his motherland. Nothing came nor could come between him and his love for India.

Brief life-sketch

Pandit Jawaharlal Nehru was born at Allahabad on November 14, 1889. His father Motilal was a distinguished and wealthy barrister of all-India renown. Being the only son of a very rich man, Jawaharlal had the leisure and learning of an English aristocrat. From the pre-school age until he left for England at the age of fifteen, he was trained at home by private tutors, most of them British. At Harrow, Cambridge and Inner Temple also he had with him private tutors to help him in his studies. With his education complete, he returned to India in the summer of 1912. At that time he was a triple aristocrat, a Brahman by birth, a gentleman by upbringing and education and the son of a prominent wealthy lawyer. In 1916 he married Kamla Kaul, the beautiful daughter of a prosperous Kashmiri businessman of his own caste.

Soon after his marriage he threw himself into the service of the country and continued to serve her with utmost devotion till the last breath of his life. In 1917 he participated in the Home Rule Movement and acted as the Joint Secretary of the Allahabad Branch of the Home Rule League. He was greatly disillusioned by the Jallianwala tragedy. He looked upon it as a profound insult to the national honour, pride and self-respect. He was also shocked to see that it violated all that he had absorbed and admired about British justice and liberal idealism. In consequence, he plunged into politics with greater vigour and enthusiasm, and assisted Mr. C. R. Das in the inquiries into the repression that followed the Amritsar tragedy.

During the first disobedience campaign of Gandhi, Jawaharlal held the office of the Secretary of the U. P. P. C. C. All his energies were devoted to the struggle : the innumerable Committee meetings, the establishment of Congress branches throughout the province, the drafting of memoranda, the organisation of *hartals* and demonstrations, public speeches by scores, and visits to the countryside in order to broaden the basis of support for non-co-operation. In 1921, he was imprisoned in the Lucknow District Jail for handling one notice of a *hartal*. He came out of the jail in March, 1922 but was reimprisoned after a couple of months. Soon after his release he lent his support to Maulana Azad in effecting a reconciliation between the two rival groups—Pro-changers and No-changers—of the Congress. His curious adventure in the Sikh state of Nabha led to his third imprisonment.

His talents as a leader of the younger generations of the nationalists were soon recognised. He was elected General Secretary of the Congress in 1928. He was also elected President of the All-India Trade Union Congress and he addressed various gatherings of nationalist youths. In the same year he led the Lucknow *Satyagraha* demonstration against the Simon Commission. Next year he was elected President of the Lahore Session of the Indian National Congress. The national struggle entered a new and significant phase of its life, when on the sacred banks of the Ravi the Congress took the pledge on the historic day of December 31, 1929, of complete independence as its goal.

The thirties saw Jawaharlal become the acknowledged heir of Mahatma Gandhi. His popularity and fame made rapid strides,

His responsibilities also increased accordingly. He took a leading part in the election campaign organised under the Act of 1935. It was primarily due to his indefatigable efforts that the Congress was able to secure a majority in six Provinces. After the resignation of the Congress ministries in 1939, there followed a critical period of the Indian history. Nehru had an effective voice in almost all the Congress decisions taken with regard to August Offer, Cripps Proposals, Quit India Movement, Cabinet Mission Plan, Partition of India etc. etc. Thus, for thirty long years (1917—47) Pandit Nehru was a valiant fighter for the liberty of Indian people and the freedom of his motherland. He sacrificed his wealth, leisure and energy for the sake of this difficult but lofty ideal.

His contributions to Indian National Movement

Pandit Nehru made many significant contributions to the Indian nationalism. In the first place, *he prevented the movement from becoming narrowly egocentric*. In simple words, he made the Indian leaders accustomed to looking on everything in international light, instead of the parochial. None of his colleagues had either the talent or the outlook for this task, not even Gandhi and Subhash Bose. Most of them were so pre-occupied with the Indian scene that events abroad were of little or no consequence for them. Pandit Nehru was the first among the Congress leaders, who stressed the need of an international outlook. And it was also he who alone fashioned a Congress 'foreign policy' as expressed in the party's resolutions on international affairs from 1936 onwards.

His second contribution to the nationalist movement was that *he infused a social and economic content into the meaning of Swaraj: he gave the movement a materialistic and socialist orientation*. He often argued with the leaders of his party that independence was the immediate goal but it must be viewed as a prelude to the transformation of Indian society ; and even during the political struggle a far-reaching reform programme should be enunciated. He hammered on this theme in his Presidential addresses to the Congress in 1929, 1936, 1937 and 1946; in his writings and innumerable speeches throughout the country. His emphasis on social and economic reforms also found expression in the Congress election manifestos of 1936 and 1946, which were drafted largely by Nehru himself.

Thirdly, it was *Pandit Nehru who enlisted the active support of the young westernised intelligentsia and youngmen generally for the*

Congress cause. And in performing this role, he did another useful service. He offered to the militant and radical youth a satisfying alternative to Communism and thereby weakened the Communist movement to the benefit of nationalism. According to Michael Brecher, "But for Nehru there can be little doubt that young nationalists in the early thirties would have turned to the Communist Party in large numbers." Because of his pledge of far-reaching land reforms and his magnetic personality, Nehru also attracted the rural masses to the Congress.

Fourthly, Nehru not only made the Congress conscious of the outside world, *he also made the world conscious of India and her struggle for Independence.* In a very real sense he was the Congress spokesman to people everywhere. His autobiography became the authentic voice of Indian nationalism and Nehru became the symbol of the people in revolt. To a large extent, it (autobiography) moulded the attitude of the American intelligentsia in the early forties and created a real, though intangible, pressure on United States policy in favour of a rapid transfer of power. And in England it provided ammunition for those elements, which favoured British withdrawal. Even among the Tories it evoked a sympathetic response and raised doubts about the morality of continued British rule over India.*

Fifthly, to the Indian National Congress Party also Nehru rendered some very important services. As early as 1928 *he placed the issue of complete independence in the fore-front of the Party's deliberations.* The following year he presided over the Lahore session, which put forth the demand for independence in the Congress constitution. Throughout the thirties and forties he fought all efforts to whittle down the nationalist demand, though he was prepared to make tactical concessions. From 1929 he was, with Gandhiji, the party's voice to Indian masses. And as the elections 1937 and 1946 revealed, he was the Congress prize vote getter, the salesman of its programme. Taken together, these contributions form an impressive record, perhaps without peer, among the revolutionaries of this century.†

His Work as Prime Minister

After the Partition of India in 1947, Nehru was faced with many formidable problems. Some of them like provincialism,

*Michael Brecher : *Nehru : A Political Biography* ; P. 618.

†*Ibid* ; P. 620.

communalism, and casteism were so grave that they threatened the very existence of the new state. To safeguard the vital interests of India, Nehru waged a relentless war against them and considerably weakened their anti-national forces. He also played an important role in the making of the Indian Constitution. It was he who provided the basic philosophy and goal of his Objectives Resolution. It was he who insisted that the process of Constitution-making should continue even during the dark days following the Partition in order that independent India might have a sound legal force at the outset. Equally important was his determination to hold elections as soon as the crises of Partition were over.

Although Nehru did not know much of economics, yet he was the chief inspiration for national planning. Our Five Year Plans owe a good deal to him, as he impressed upon his countrymen that India could progress materially and socially only through the wide-ranging planning. He was also responsible for the ambitious Community Development Programme, an attempt to instil the concept of self-help into 325 million peasants.

His other activities on the domestic front included his deference for the parliamentary process. He often gave way to public opinion and tried to change society by consent and taxation, rather by coercion and resolution. He took the reform of Hindu law to the electorate before bulldozing it through Parliament. Almost all the measures, which were taken in his time to achieve equality, were highly constitutional.

His contribution in the sphere of India's foreign policy was no less significant. He skilfully put India on the world map as if she was one of the major powers. For about two centuries before her Independence, India's voice in the world politics was inaudible. She acted as a colony of Great Britain and in accordance with the wishes of London. But in less than a decade, Nehru brought her into the coterie of great powers. He also raised her prestige and national pride as no Indian but Gandhi has done in centuries.

Moreover, it was Nehru who facilitated the manner and process of decolonization and warned the world that it was racing into nuclear destruction. He was the first to call on the world about

the extent to which Russia was leading in the technological education and the first non-Communist leader to pay a visit to Russia. To Nehru also goes the credit of inviting the Soviet leaders (Khrushchev and Bulganin) to come out of their shell and see the free world. His example was followed by the western powers as soon as they recovered from their erroneous belief that Nehru was a Soviet stooge. Finally, it was Nehru who first created the concept of aids without strings and non-alignment in cold war. Aid without strings has now become an accepted practice, while non-alignment has been followed by most of the newly emergent nations.

His death. On May 27, 1964 Pandit Nehru died of a heart attack. His death cast a gloom all over the country. State mourning for 12 days was officially announced and world dignitaries rushed to Delhi in special flights to attend the funeral and pay their last respects to the departed world statesman. Millions joined the funeral procession, which was about six miles long. It was acknowledged everywhere in the world that his death was not a loss to India alone, it was also a great loss to the world at large.

FURTHER READING

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|----------------------------|---|
| 1. <i>D.S. Sharma</i> | : Studies in the Renaissance of Hinduism in the 19th and 20th centuries |
| 2. <i>Rajen Sen</i> | : C.R. Das |
| 3. <i>R.P. Masani</i> | : Dadabhai Naoroji |
| 4. <i>D.V. Tahmankar</i> | : Lokmanya Tilak |
| 5. <i>S.A. Walpert</i> | : Tilak and Gokhale |
| 6. <i>K. Kriplani</i> | : Rabindranath Tagore |
| 7. <i>M.K. Gandhi</i> | : The Story of My Experiments with Truth. |
| 8. <i>L. Fisher</i> | : The life of Mahatma Gandhi. |
| 9. <i>B.R. Nanda</i> | : Mahatma Gandhi |
| 10. <i>Michael Brecher</i> | : Nehru : A Political Biography. |
| 11. <i>Taya Zinkin</i> | : Challenges in India |
| 12. <i>Rajendra Prasad</i> | : Autobiography |

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| 13. | <i>V.C. Joshi</i> | : | Lala Lajpat Rai (writings and speeches) |
| 14. | <i>K.L. Panjabi</i> | : | Vallabhbhai Patel. |
| 15. | <i>Maulana Azad</i> | : | India Wins Freedom |
| 16. | <i>Subhash Bose</i> | : | The Indian Struggle |
| 17. | <i>H.N. Das Gupta</i> | : | Subhash Chandra |
| 18. | <i>S.K. Majumdar</i> | : | Evolution of Netaji |
| 19. | <i>R. Besant</i> | : | Birth of New India |
| 20. | <i>P. Sitaramayya</i> | : | The History of the Indian National Congress. |

PART III
CONSTITUTION OF INDIAN REPUBLIC

CHAPTER 19

Our New Constitution

(INTRODUCTION AND OUTLINE)

New Constitution---A Great Achievement

India achieved Independence in August, 1947, and her people began the life of a new nation. The attainment of freedom, after a long British rule, was indeed a great achievement. But it was not an end in itself. It was rather the beginning of a new struggle. Freedom brought many a problem in its train and created new challenges for the country.

Of the various problems which confronted free India, one pertained to the making of her new constitution. Pt. Jawaharlal Nehru held the view that 'New India must have a sound legal force from the very beginning.' But it was not an easy task to frame a constitution for 400 million people owning diverse religions, customs, traditions and cultures. The more so, because the circumstances under which India attained her freedom were unfavourable, rather tragic. On account of the wholesale killings of Hindus by Muslims and Muslims by Hindus, the communal frenzy was at its worst. The mass migration of Hindus from Pakistan to India had given rise to a formidable problem : the problem of their rehabilitation. To add to the difficulties, there was scarcity of food in some parts of the country. Besides, the stability and security of free India was also in danger. For, the British decision with regard to princely India had created an

intriguing situation. More than five hundred states had been left free to join India or Pakistan. They could choose to remain independent even. The hostile attitude of newly-born Pakistan had created unexpected and new complications. After the ruler of Kashmir had declared his accession to India in October, 1947, the Pakistani troops moved across the border into Kashmir. India could not stand this Pakistani aggression and there ensued an open warfare between the forces of the two Dominions. A Communist-led peasant insurrection had also to be dealt with in Talengana. It was also not an easy affair, because there was already an unusual pressure on the internal law and order situation. The strain of Partition had rather brought the administration on to the verge of breakdown. Thus, the leaders of free India were faced (at the very outset) with diverse and difficult problems : the refugees were to be rehabilitated ; states were to be integrated ; the Communists were to be controlled and millions of mouths to be fed.

Much to the credit of their statesmanship, our leaders successfully tackled many of these problems. They also succeeded in drafting a constitution based on the ideals of liberty, equality, fraternity and justice. The making of the New Constitution in the darkest days of Indian history was, indeed, a great achievement. And the fact, that the Constitution framed by our leaders has been working successfully for the last twenty years, makes their efforts all the more creditable. It also proves that the Constitution-makers were men of vision endowed with realism and practical sagacity. In the words of K.M. Munshi, "The Indian Constitution has been hailed as a remarkable achievement by all the outstanding jurists of the Free world. It has successfully stood twenty years of rough weather and has become a firm foundation for political, economic and social progress." While writing about the Indian Constitution, Mr. Granville Austin, in a way, appreciates the Indian nation with the comments : "Indians had for years demanded a constitution.....when the opportunity came, they framed one ; and for the past two decades they have demonstrated that they have the ability to make it work." In view of the fact that the new nations of Asia had to face incalculable difficulty in framing their constitutions, India's achievement in this respect seems nothing but glorious.

An outline of the Constitution

India adopted her new Constitution on January 26, 1950 and became a republic. The Indian Constitution consists of 22 Parts and 9 Schedules.

Part I relates to the Union and its territory. It consists of only four articles (Arts. 1—4). Article I states that India, that is Bharat, is a Union of States. This statement not only distinguishes New India from the Old one but also emphasises the integration of all the territories within its geographical boundaries.

Part II deals with citizenship of India. It embodies in all seven articles (Arts. 5—11). It provides for a single citizenship.

Part III describes the Fundamental Rights of citizens. It consists of 24 articles (Arts. 12—35). These rights (right to equality, right to freedom, right against exploitation, etc. etc.) form a very important part of the Constitution and are enforceable by courts. No law inconsistent with these rights can operate in the Indian Union.

Part IV deals with the Directive Principles of State Policy (Arts. 36—51). Their over-all objective is to establish a Welfare State in India. Though not enforceable by courts, these principles are, nevertheless, fundamental in the governance of the country.

Part V, relating to Union Government, consists of five chapters, and includes in all 100 articles (Arts. 52—151). Chapter I deals with the Union Executive—The President, the Vice-President, the Council of Ministers and the Attorney-General of India. Chapter II deals with Parliament, its composition, its officers, its conduct of business and the qualifications, election and terms of its members. Chapter III describes the legislative powers of the President. Chapter IV pertains to the Union Judiciary—the constitution of the Supreme Court, salaries and appointment of judges, powers of the Supreme Court etc. Chapter V deals with the Comptroller and Auditor-General of India, his duties and powers.

Part VI deals with the State Executive (Governor, Council of Ministers, Advocate General, etc), the State Legislature, and State Judiciary. It contains in all 86 articles (Arts. 152—237).

Parts VII, VIII, IX and X embody less than twenty articles. They deal primarily with the administration of Scheduled and Tribal Areas.

Parts XI, XII, XIII deal with the Union-State relations. This subject has been discussed in great detail to secure the smooth working of the Constitution.

Parts XIV, XV, XVI relate respectively to : (a) Public Services and Public Service Commission ; (b) Elections and Election Commission ; (c) Special provisions for Scheduled Castes and Scheduled Tribes, and Anglo-Indian Community, their special representation in legislatures, reservation in services etc.

Part XVII embodies 9 articles (Arts. 343—351), which deal with Official language of the Union, regional languages, language of the Supreme Court and High Courts, etc.

Part XVIII (Arts. 352-360) deals with the emergency problem. It envisages three types of emergency : a threat to the security by external aggression or internal disturbances, a breakdown of constitution in a state, and financial crisis. To deal with such abnormal situations, the Constitution confers emergency powers on the President.

Part XIX contains miscellaneous provisions (Art. 361—67) relating to the protection of President and Governors, rights and privileges of the Indian States etc. etc.

Part XX consists of only one article (Art. 368). It deals with the amendment of the Constitution.

Parts XXI and XXII deal respectively with (a) power of the President to adapt laws, judges of High Courts, Comptroller and Auditor-General, Public Service Commissions and power of the President to remove difficulties ; (b) commencement of the Constitution and repeal of certain Acts.

Nine Schedules. These Schedules are appended to the Constitution. The *First Schedule* mentions the names of the States and Union Territories, which together form the territory of the Indian Union. The *Second Schedule* relates to matters referred to in the various articles of the Constitution. The *Third Schedule* prescribes the forms of Oaths of office and Secrecy meant for

ministers, judges and other functionaries of the State. The *Fourth Schedule* contains the allocation of seats in the Council of States, for each State or Union Territory. The *Fifth Schedule* embodies provisions relating to the administration and control of Scheduled Areas and Scheduled Tribes. The *Sixth Schedule* contains provisions as to the administration of the Tribal Areas in Assam. The *Seventh Schedule* refers to Art. 246, which deals with the distribution of legislative powers between the Union Parliament and the State Legislatures. It contains the three well-known legislative lists viz. Union List, State List and Concurrent List. The *Eighth Schedule* mentions the Languages referred to in Articles 344 and 351. It also lists 14 Languages. The *Ninth Schedule* refers to Art. 31-B inserted to the Constitution (First Amendment 1951) Act.

CHAPTER 20

The Making of the Constitution

The idea and demand of Constituent Assembly

The working Constitution of India was framed by the Indian Constituent Assembly in the years from December 1946 to December 1949. This constitution-making body was established under the provisions of the Cabinet Mission Plan of 1946, but the idea of a constituent assembly for India had been mooted much earlier. During the First World War (1914-1918) a few enlightened Indians had conceived for the first time that Indians should be given the right to determine the form of government under which they would like to live as also to frame their own constitution. This claim of theirs was subsequently supported by the declaration of the Allies, which provided that every nation, big or small, must have the right of self-determination. The declaration raised high hopes among the Indians for a time, but, unfortunately, these hopes could not be fulfilled. For, at the termination of the World War the attitude of the British Government underwent a change. They denied to the Indians their right of self-determination.

This unfavourable attitude of the British Government, however, could not put an end to the Indian demand for the right of self-determination. Mahatma Gandhi in 1922 observed : "Indians must shape their own destiny Swaraj must spring from the wishes of the people of India [as expressed through their

freely chosen representatives". The demand for the constituent assembly gained greater strength in the subsequent years, till the Indian National Congress made it a part of its official policy in 1934.* Thereafter, it reiterated its demand at various Congress sessions. For example, at the Faizpur Session of 1937, the Congress made a demand for a constituent assembly elected on the adult suffrage and having the power to frame the constitution of the country. It made a similar demand in 1939, and again at the Ramgarh session of 1940.

World War II, which broke out in 1939, gave an added strength to the Indian demand for a constituent assembly. For, the mood of the Indians became increasingly one of self-assertion, of readiness to take their destiny into their own hands. Besides, the Indian public began to feel itself a corporate unit and also of age. It seemed as if they would accept only a constitution drafted by themselves.

The British Government felt considerably excited over the name of the constituent assembly itself. They were not prepared to make an explicit declaration in favour of this demand of the Congress. But the exigencies of the War, combined with the national and the world forces, made it imperative for them to concede it. Hence, the Draft Declaration of the British Government, which embodied the celebrated Cripps Proposals (1942), provided for the setting up of a constituent assembly after the cessation of hostilities and also prescribed the manner in which its members were to be elected. Since the Cripps Proposals were rejected by the Indians on more vital grounds, the British offer of the constituent assembly was of not much consequence. It was, however, encouraging for the Indians that the British had recognised their right to frame their own constitution through a constituent assembly. The demand of the constituent assembly was finally accepted by the Cabinet Mission Plan (1946), which made it also a practical proposition. The authors of the Plan, however, did not give the name constituent assembly to the machinery they proposed for drafting the constitution. It went by the simple name of a constitu-

*Refusing to accept the 1933 White Paper, because it did not express the will of the people of India, the Congress Working Committee stated: "The only satisfactory alternative to the White Paper is a constitution drawn up by a constituent assembly".

tion-making body'. The term constituent assembly was used for the first time in clause 8 of the Indian Independence Act, 1947.

The Constituent Assembly comes into being

As provided in the Cabinet Mission Plan, the Constituent Assembly for India came into being in November, 1946. In its house of 296 members, the Congress could count upon the allegiance of 212 members, while the League whip was accepted by 73. Of the remaining 11 members no less than 6 members were likely to follow the Congress. This commanding position of the Congress in the Assembly and Nehru's statement at Press Conference of July, 1946, brought about a change in the policy of the League.* It withdrew its acceptance of the Cabinet Mission Plan and demanded a separate constituent assembly to frame a separate constitution for Pakistan. The British Government and the Congress leaders persuaded the League to participate in the work of the Constituent Assembly, but all in vain. According to Rajni Kothari the League's withdrawal from its earlier acceptance of the plan, its resolve to press the demand for partition, and its decision not to participate in the Constituent Assembly had one good effect. It saved the country from the kind of constitutional wrangles that have elsewhere led to chaos and *coup d'etat*.

The boycott of the Constituent Assembly by the Muslim League did not affect its representative character or its wealth of talent and experience. For, the Congress tried to give to the Assembly as broad-based a membership as possible by nominating and supporting the election of representatives from all the major communities and from all shades of political opinion. It selected caste Hindus, Harijans, Muslims, Sikhs, Christians, Anglo-Indians, Parsis and others. Of the thirty-one Harijan members in the Assembly, twenty nine were nominees of the Congress. Likewise, it selected men (Dr. S. Radha Krishnan and N. Gopalaswami Ayyangar), who had never served the Congress in the past. Even some, who had at times actively opposed the Congress during the movement for independence (S.P. Mukerjee and Dr. Ambedkar), were also given an honourable place in the Assembly, because the Congress leaders

*According to Maulana Azad, Nehru told the press representatives at Bombay that the Congress had agreed only to participate in the Constituent Assembly and regarded itself free to change or modify the Cabinet Mission Plan. This statement was exploited by Mr. Jinnah, who subsequently withdrew the acceptance of League.

wanted their talents in administration, and constitutional law and their experience in national affairs to be available to the Assembly. As a result of this policy, the Constituent Assembly secured the services of not only the top-ranking Congress leaders of the time (except Gandhiji) who chose to remain outside but also of men like A. K. Ayyar, H. N. Kunzru, N. G. Ayyangar, Dr. Ambedkar K.T. Shah, Dr. Shyama Prasad Mukerjee, K. Santhanam, M.R. Jayakar, Dr. Sachadinanda Sinha and K.M. Munshi etc. etc.* The Indian womanhood was represented by Srimati Sarojini Naidu, Mrs. Hansa Mehta and Mrs. Durgabai Deshmukh. The minority communities were also fully represented in the Constituent Assembly. It had seven Indian Christians, three Anglo-Indians, three Parsis, and so on. According to K. Santhanam, "There was hardly any shade of public opinion not represented in the Assembly†. Some of these persons were first-rate statesmen, some seasoned administrators, some leading lawyers and others reputed scholars.

Status of the Constituent Assembly

From a strictly constitutional point of view the Constituent Assembly could not be called a sovereign body. It had been brought into existence by the British Government and the same could, constitutionally speaking, abolish it.‡ Apart from this, its authority was limited both in respect of basic principles and procedure. It could not change the main outlines of the constitution provided in the Cabinet Mission Plan. For example, it could not transfer any subjects to the Centre other than Foreign Affairs, Defence and Communications. It had no real control over the constitution-making of the states and the provinces. Besides, it was subject to the final authority of the British Parliament. In addition to these external checks, the attitude of the Muslim

*In the Assembly were 6 past or present Congress presidents, 14 Provincial Congress Committee Presidents, and, in 1949, 14 out of 18 members of the Congress Working Committee were also active in the Assembly. Among them and other notables were the four chiefs of the Party: Jawaharlal Nehru, Vallabhbhai Patel, Maulana Azad and Rajendra Prasad.

† This claim is sometimes contested by some political parties and sections of the society.

‡ The British Government was, of course, not likely to abolish it. The Constituent Assembly itself asserted in its Rules that it could not be abolished except by its own resolution passed by at least two-thirds of the total number of its members.

League constituted for a time a powerful internal handicap on the working of the Constituent Assembly.

These limitations of the Assembly were, however, very soon removed. The Indian Independence Act, 1947, gave it the much-needed legal sovereignty and also conferred upon it the role of free India's Provisional Parliament. No Indo-British Treaty was now necessary, for the role assigned to the contemplated treaty under the Cabinet Mission Plan had been played by the 1947 Act. Hence, the transfer of power to India on 15 August, 1947 was absolute. Pt. Jawaharlal Nehru remarked : "Freedom and power bring responsibility. That responsibility rests on this Assembly, a sovereign body, representing the sovereign people of India."* With the Partition of India and the subsequent establishment of Pakistan, the Constituent Assembly was freed from also the internal handicap, which had so far blocked its progress. Thereafter, the Constituent Assembly acted in the dual capacity of a constitution-making body and a legislature till the election of the Union Parliament under the new Constitution in 1952.

THE CONSTITUENT ASSEMBLY AT WORK

The Constituent Assembly started its work in December 1946 and completed it by December 1949. The work accomplished by it during these three years may be conveniently discussed under the following two heads :

- (a) Work accomplished before Partition (August 1947),
- (b) Work accomplished after Partition (August, 1947—49).

(a) *Work accomplished before Partition*

The Constituent Assembly met, for the first time, on December 9, 1946, under the temporary chairmanship of its oldest member Dr. Sachadinanda Sinha. The Muslim Leaguers from Bengal, U.P., Sindh, N.W.F.P. and the Punjab boycotted it. Though the absence of the League's representatives was deeply regretted, yet the Assembly decided to go ahead with its work. On December 11, 1946, it elected Dr. Rajendra Prasad as its permanent chairman. In his address Dr. Prasad spoke of establishing a classless society, which was to grow into a co-operative commonwealth. These ideals were enshrined in the celebrated "**Objectives Resolution**," which was moved by Pt. Jawaharlal Nehru on December 13, 1946. This Objectives Resolution

**Constituent Assembly Proceedings* (1947)

visualised an India :—

(i) Wherein all power and authority of the Sovereign, Independent India, its constituent parts and organs of Government are derived from the people ; and

(ii) Wherein shall be guaranteed and secured to all the people of India justice—social, economic and political—equality of status, of opportunity and before the law ; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality ; and

(iii) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes ; and

(iv) Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of the civilized nations ; and

(v) This ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

The Objectives Resolution of December, 1946 was quite significant. It gave expression to the aspirations and ideals for which the people of India had worked and struggled. It also embodied the broad objectives, which the Constituent Assembly was to set before itself. In the words of Sri K. M. Munshi, “the Resolution cast the horoscope of our Sovereign Democratic Republic.” Pt. Nehru described it as “a solemn pledge of our people.”

A careful analysis of the Resolution reveals that the objectives laid down in it were general in character as befitted the occasion. The Assembly was to proclaim India an Independent Sovereign Republic, was also to draw up a constitution for a Union consisting of British India and the Princely States. This constitution was to guarantee the classical western freedoms, such as freedom of thought, expression, belief, faith, vocation etc. etc. subject to law and morality. It was also to provide for adequate safeguards for the minorities and backward tribes and castes. It is believed that Nehru was wise enough not to include anything in the Resolution, which would make it a controversial subject.

According to Michael Brecher Nehru played a key-role in shaping the Objectives Resolution. The emphasis on fundamental

rights, federalism, and, most important, the goal of independent republic, owes much to his political outlook Besides, he expressed the mood of nationalist India on the eve of Independence and set the tone for future Assembly debates, as well as provided the basic frame of reference for the new Constitution.*

After the Objectives Resolution had been adopted by the Constituent Assembly (in its second session on January 22, 1947), it proceeded to appoint committees to deal with different aspects of the new constitution. Of the various committees appointed for the purpose the more important were : the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee, the Advisory Committee on Minorities, Fundamental Rights Committee and the Committee for negotiating with the Princes. Each of these Committees was chaired either by Nehru or Patel or Dr. Prasad. In many cases, the other two or Azad was also present. The reports of these committees were to be considered by the Assembly and their recommendations were to be adopted after discussion and amendments, where necessary. This stage was completed on the eve of Partition.

(b) Work accomplished after Partition

About two weeks after the Partition of India (29 August, 1947), the Constituent Assembly appointed a Drafting Committee. It was to collate the reports and of the various committees and prepare a draft of the Constitution for the consideration of the Assembly, as a whole. The Drafting Committee consisted of Dr. B.R. Ambedkar (Chairman), N. Gopalaswami Ayyangar, Alladi Krishnaswami Ayyer, K.M. Munshi, Saiyid Mohd, Saadulla, N. Madhave Rau and D. P. Khaitan. Sri B. N. Rau and Sri S. N. Mukerjee were to act respectively as the constitutional adviser and principal draftman of the committee. In October, 1947, Mr. Rau was sent abroad to U.S.A. Canada, Eire and the United Kingdom to gain first-hand knowledge of the working of their constitutions by personal discussions with leading constitutional authorities of those countries.

The Draft Constitution was completed by February, 1948. It was, thereafter, published and openly discussed in the press, on the platform and by responsible bodies. For about eight months, it was subjected to public scrutiny. From November, 1948 to November, 1949, the finished product was hammered out almost

* Michael Brecher : *Nehru : A Political Biography*, P. 330.

in a continuous session of the Constituent Assembly. Though Congress had an overwhelming majority in the Assembly, its decision-making processes were democratic, for, the Assembly was made up of strong-minded men. Hence, the Assembly decided issues democratically after genuine debate and discussion. Its members paid due consideration to the vast number of difficult problems, conflicting claims, ideologies and opinions with which they were faced. To the Draft Constitution, no fewer than 7,635 amendments were tabled by its members and as many as 2,473 were actually moved, discussed and disposed of. From these deliberations emerged the present Constitution of India. The Constituent Assembly held eleven sessions and took about three years (Two years, eleven months and eight days) to complete its work.

Adoption and inauguration of the Constitution

The motion that the Constitution, as settled by the Assembly, be passed was put to vote in November, 1949. It was adopted amidst prolonged cheers. The Constituent Assembly was then adjourned till 24th January, 1950. On that day Dr. Rajendra Prasad was elected the first President of India. The Constitution came into force on January 26, 1950, exactly twenty years after the nation took the Independence Pledge on January 26, 1930. at Lahore. India became Sovereign Democratic Republic.

General Observations

It is sometimes alleged that the Indian Constituent Assembly was a one-party body. It did not include the representatives of the socialist groups, Hindu Mahasabha, R.S.S. etc. etc. It was completely in the hands of Indian National Congress and its eminent leaders : Nehru, Patel, Prasad and Azad constituted an oligarchy within the Assembly and their influence during the drafting period was irresistible.

A close and candid scrutiny of the facts, however, reveals that these contentions of the critics do not carry much weight. The absence of a formal socialist group in the Constituent Assembly meant little, for most of the members of the Assembly thought themselves as socialists. Besides, the Socialists were divided among themselves about the desirability of joining the Assembly. This made it difficult for the Congress to create necessary seats for them. The absence of the representatives of the Hindu Mahasabha or R.R.S. or any other such group also did not make any material difference.

Their views on the institutional aspects of the constitution differed little from the Congress. Moreover, the Assembly had on it men like Pershotam Dass Tandon and Shyama Prasad Mukerjee, who were sure to represent the view-point of such groups. As regards the supreme importance of the four Congress leaders—Nehru, Patel, Prasad, and Azad—it may be pointed out that they were held in high esteem. They were greatly loved by the people. They were incapable of doing any wrong to the people. Moreover, they were responsive to the manifold currents of opinion in the Assembly. Even Patel, who had the reputation of being the strongest amongst the Congress leaders, was not an unbending man. His handling of minorities problem in the Advisory Committee was remarkable for its patient consideration of minority fears. He is said to have remarked: "Our mission is to satisfy every one of them (the minorities). At least, let us prove we can rule ourselves and we have no ambition to rule others." To cap all, there was a constant effort on the part of Nehru, Prasad and others to reach a unanimous decision. No attempt was made to force decisions. Pandit Nehru frankly asked the members of the Assembly to frame the constitution 'in the proper time and with as great a respect for unanimity as possible.' Dr. Prasad, the President of the Constituent Assembly, preferred to postpone debates and allow time to work out an agreed solution. Even Pandit Pant once moved that a particular article be passed over, because the Assembly had not been able to reach unanimity.* Obviously, the leadership in the Assembly was fully conscious of the enormous task before it, and it accomplished the work in an admirable way.

FURTHER READING

1. *G. Austin* : The Indian Constitution: Cornerstone of A Nation.
2. *B.N. Rau* : India's Constitution in the Making
3. *Shiva Rao* : Framing of India's Constitution
4. *M.N. Roy* : Draft Constitution for Free India
5. *A.C. Banerjee* : The Constituent Assembly of India.
6. *K.M. Panikkar* : The Foundations of New India.
7. *Rajni Kothari* : Politics in India.

*C.A.D. VIII, 7, 431.

CHAPTER 21

Salient Features of the Constitution

The Indian Constitution is an ably conceived and drafted document. It is unique both in its contents and spirit. Its most significant features are as under :—

The longest and the most comprehensive constitution in the world

The Indian Constitution, in the words of Ivor Jennings, is 'the longest and the most detailed in the world'. It is a formidable document of 395 Articles (divided into 22 parts) and 9 Schedules.* From the standpoint of its size, it is five times bigger than the Constitution of the United States of America and seven times that of the Fourth Republic of France. Even the new Constitution of Ceylone, which claims to be sufficiently detailed and comprehensive, is less than half the size of the Indian Constitution.

This unusual size of the Indian Constitution is in part due to its own character. It is a federal constitution, which is normally longer than the constitution of a unitary state. Besides, unlike most of the federal constitutions, it embodies the structure of not only the Central Government but also of the Governments in the States. In addition to that, it deals with the various aspects of these Governments in greater detail. The chapters on the Union Government, the State Governments and on the Union-State relations alone cover more than 240 Articles. Further, our constitution-makers could not be indifferent to the prevailing conditions and

*Eight more articles have been added to the original document as a result of various amendments, but no change has been made in its serial number. They are 31 A, 31 B, 258 A, 290 A, 350 A, 350 B, 372 A and 378 A.

peculiar circumstances. They could not discard the Act of 1935, which for a decade or so had, on the whole, worked well. They were fully alive to the immediate problems and the future needs of the country. They also felt it necessary to satisfy the diverse and conflicting claims of the various sections of the society. They, therefore, borrowed profusely from the Act of 1935. They included a number of provisions relating to official language, Scheduled Castes, Scheduled Tribes and such other problems peculiar to India. They inserted there in an elaborate list of Fundamental Rights and also a full chapter of 16 Articles on the Directive Principles of State policy. Apart from that, they preferred to rely more on word than on convention. All this naturally added to the bulk of the Constitution.

Some other factors also account for the bulk of the Constitution. The fathers of our Constitution were men of deep wisdom and broader vision. They did not like to remain bereft of the benefit, which they could derive from the practical experience of the constitutions of other countries. So they borrowed freely from them the material, which suited the constitutional needs of the nation. They also included a number of details which were thought to be of fundamental importance. For example, the provisions relating to Public Services and Judiciary were included so as to put their independence beyond the reach of the Parliament, thereby giving them a special sanctity. According to some critics the pre-dominance of the lawyer element in the making of the Constitution also contributed to the length of the constitutional charter.

Since brevity is an essential characteristic of an ideally best form of constitution, some scholars of repute (Sir Ivor Jennings and B.M. Sharma) have criticised the Indian Constitution for its voluminousness. Prof. B.M. Sharma writes : "The Indian Constitution is exacting to a student of constitutions. Its large bulk almost terrifies a reader, who may feel inclined to read it and understand it".* This contention of the critics is not without weight, but the authors of the Constitution sacrificed brevity for a greater good. And in doing this they were amply justified.

A Sovereign Democratic Republic

The Preamble to the Constitution defines new India as a "Sovereign Democratic Republic." This description of India is

* Sharma B.M. : *The Republic of India* P. 136.

quite significant. The word 'Sovereign' emphasises that India is no more a 'dependency' of the British Empire (as she was before the passage of the Indian Independence Act, 1947) nor is her political status that of a 'Dominion' (which she had from 15th of August 1947 to 26th January, 1950). On the other hand, she is a sovereign state in the sense and manner in which Great Britain, the U.S.S.R., the United States of America and the Swiss Republic are. Being a sovereign power, India is completely free from external control. No outside power has a right to interfere with her internal administration or direct her in the conduct of her foreign policy.

India is, no doubt, a member of the Commonwealth of Nations and accepts the Crown of England as the Head of the Commonwealth, but this does not affect her sovereignty in any manner. The agreement to remain in the Commonwealth does not find place in the Indian Constitution nor has it any legal obligations. The Commonwealth is, in fact, a free association of free nations based upon voluntariness of membership. Hence, India is free to break her association with the Commonwealth as easily as she had established it in 1949. Pandit Jawaharlal Nehru explained this position in these words: "The new Commonwealth does not restrict India's independence either in the external or internal sphere. It has no strings attached in it. India is not compelled to stay in the Commonwealth even one minute longer than she may desire to. The agreement is in full accord with the Congress pledge and India's foreign policy of non-alignment with power blocs. It gives to India 'independence plus security' in political and economic sphere".

India's membership of the U. N. O. is also not incompatible with her sovereignty. A sovereign power may enter into a treaty or alliance with any other sovereign power, and such a treaty cannot detract its sovereignty. Moreover, the membership of the U.N.O. is a self-imposed limitation, which cannot be inconsistent with the sovereignty of India.

The term 'Democratic' signifies that India has adopted a democratic way of life. Her Constitution seeks to establish a form of government, which derives its authority from the will of the people. The people elect the rulers of the country and the latter are accountable to the people. Besides, the State does not

discriminate against any citizen on the grounds of religion, birth, sex, creed, caste or colour. The elimination of the communal electorates and the introduction of the adult franchise, the abolition of titles and ban on untouchability, equality of opportunity in matters of public employment, the freedom of speech and expression, etc. etc. all that is provided in the Constitution ... undoubtedly aim at establishing a truly democratic set-up in the country. The emphasis on democracy is also evident from the fact that the Constitution guarantees in every possible manner ■ sense of justice, equality, freedom and security to all minorities in India and upholds the principle of a composite secular state. Thus, the word 'Democratic' in the Preamble, is used in its broadest sense and as such it embraces, in addition to political democracy, social and economic democracy as well.

The term 'Republic' in the Preamble indicates that India has chosen to have an elected head of the State. Her Chief Executive—the President—is not a hereditary monarch like the British King but an elected head chosen for a limited period. As a matter of fact, the acceptance of the republican form of government left no alternative to the Fathers of the Constitution but to have an elected head of the State. For, under a republican form of government the head of the State (single or collective) is always elected for a specified period. The President of the U. S.A. for instance, is, elected for a fixed period of four years. The Collegium in Swiss Republic enjoys a term of seven years. Similarly, the people of the Indian Republic also elect one of them as their President for five years. According to T.K. Tope, "The Indian republic is to be distinguished from the ancient Greek and the ancient Indian republics, which were essentially aristocratic, and also from the modern republic, like the U.S.S.R. which is of dictatorial nature. The Indian republic is a democratic republic."*

India—A Secular State

Though the word 'secular' does not find a place in the Constitution, yet its scheme and provisions seek to make India a secular state. The Preamble to the Constitution records the solemn resolve of the people of India to secure to all its citizens, (i) social, economic and political justice, (ii) liberty of thought, expression, belief and worship and (iii) equality of status and opportunity..

Tope T.K. : The Constitution of India P. 5

The constitutional provisions relating to citizenship contemplate only one class of citizenship. Part III, dealing with the Fundamental Rights of the citizens, contains express provisions prohibiting discrimination against a citizen on grounds of religion, race or caste. Similarly, the provisions pertaining to adult suffrage, uniform civil code, abolition of untouchability, etc. etc. also make for a secular state.

India as a secular state does not profess any state religion, nor does it discriminate against any. It also does not allow its authority to be used for the propagation of any religion or creed. Even in the formulation of its policies it is not guided by any religious principles. It is mainly concerned with the social, economic and political welfare of the people, leaving the religious matters to the individual as his personal concern. In the words of K.M. Panikkar, "In the composite secular state of India the political institutions are based on the economic and social interests of the entire community, without reference to religion, race or sect. All enjoy equal rights but no privileges. All communities share the power as they share the duties and responsibilities of being a citizen.*

India is secular also in the sense that the Indian Republic treats all religions alike and displays a benevolent neutrality towards them. It confers a wide range of freedom on the individual and religious denominations. Every office from the highest to the lowest is open to its citizens without any discrimination. In the words of Pandit Nehru, "In the secular state of India every religion and belief has full freedom and equal honour, and every citizen has equal liberty and equal opportunity, the minorities are given a fair and just treatment and equitable educational and economic facilities".

The Indian secularism, it is necessary to emphasise, is not anti-God or anti-religion. The Indian Constitution recognises the existence of God. The President of India and other high dignitaries of the State have to take an oath. Then, they have to either swear in the name of God or make a solemn affirmation. Besides, the Indian secularism does not prohibit the State from interfering with the undesirable activities, which may be carried on under the guise of religion. It also does not prohibit the State from implementing the programme of social

*Panikkar K. M. : *The foundation of new India* Pp. 164—65.

welfare and social reform. The spirit of tolerance is the foundation of the theory of Indian secularism.* To quote K. Subba Rao, "India is a cradle of religions.....which govern the Indians' social, political and economic aspects of life. It is, therefore, not possible to import or implant the finished product of the secularism of the western variety on Indian soil. The Indian Constitution instead of secularism, accepts the doctrine of tolerance."

Parliamentary form of Government

The Indian Constitution provides for a parliamentary form of government and this system has been adopted both at the Centre and in the States†. The President of the Indian Union and Governors of the States are constitutional rulers with nominal powers. They act on the advice of their respective cabinets, which wield the real executive authority in the Union or in the States, as the case may be. Besides, as is essential in a parliamentary system of government, the executive (both at the Centre and in the States) is drawn from the legislature and depends for its existence upon the confidence that the legislature has in it. The ultimate legislative and executive control is vested in the popular house, which is elected on the adult suffrage. Thus, the Constitution-makers have followed the

*Some critics of the Constitution hold the view that it does not envisage a secular state in the real sense of the term. There is no provision in the Constitution laying down the complete separation of State from religion as is in the U.S.A. Some provisions of it empower the State to legislate so as to affect individual and corporate religious freedom. In reply to this criticism it is contended that a secular state in the strict sense was not suited to India, because it rendered the state powerless to promote a secular attitude in the citizens in the social and political matters. Moreover, a strictly secular state could not play a positive role in the promotion of education and culture in a country like India, where religion is all-pervasive and culture is inextricably tied up with ideas rooted in religion.

Donald Eugene Smith in his excellent book *India as a Secular State* perceptively remarks ; "India is a secular state in the same sense in which one can say that India is a democracy." He adds : "It would be foolish to think that secularism is so firmly established in India that its future is assured."

†India, as a matter of fact, could not but accept the parliamentary system of government. There had been a Central Legislature in India since 1848 and it had been transformed into a National Parliament by the acceptance of direct election on a broad franchise in 1921. In the Provinces also similar evolution had taken place. The structure of parliamentary democracy had thus been in existence for over a period of hundred years. Under such circumstances it was difficult for India to retreat her step, when she had travelled along the road for a considerable distance.

British model in setting up the governmental machinery at the Centre as well as in the States.

It would not be out of place to mention here that the parliamentary government in India has been given a constitutional basis. It does not rest entirely on conventions. The drafters of the Constitution have left, only to a limited extent, the successful working of the parliamentary government to the growth of suitable conventions. Besides, although *The Manchester Guardian* (June 5, 1954) boldly observed "that the Indian Parliament is the only institution of the kind (in Asia) which is working in an exemplary way, yet it is too early to claim that the cabinet government of British type has come to stay in India. For the success of the parliamentary government in India, a strong opposition and an alternative government are essential. India at present lacks both."*

Federal in form but unitary in spirit

Though India has been described as a 'Union of States', yet her Constitution is essentially federal in form. It possesses many a feature of the federal constitution. *In the first place*, the Constitution is the supreme law of the land. Its provisions are binding on all governments. Neither the Union Government nor the Governments in the States can over-ride them. All the authorities must function under it and be loyal to it. No law inconsistent with any of its provisions can prevail. The President of India, the Governors of the States, and all other important dignatories of the Republic have to take an oath or affirmation to act according to the Constitution. *Secondly*, the Indian Constitution makes a thorough going division of powers between the Union and the States. Articles 245 and 246 lay down the principle of distribution of powers, and the Seventh Schedule to the Constitution includes three Legislative Lists : the Union List, the State List and the Concurrent List. The Union List contains 97 items, which are under the exclusive jurisdiction of the Parliament. The items of the State List (66 in number) are normally within the competence of the State Legislatures. The Concurrent List is common

*The British parliamentary system which we have adopted has not succeeded in every country or climate. In France, a large number of splinter groups have made it impossible for a ministry to last for more than a few months reducing that country into a state of chronic cabinet crisis and dismal failure to concentrate on any long term plan of political reform or economic development." *Chagla, M C. Ambassador speaks*, P. 36.

both to the Union and the States. *Thirdly*, as is essential in a federal polity, our Constitution has assigned a special position to the Supreme Court of India. It is the highest interpreter of the Constitution and a tribunal for the final determination of the disputes between the Union and its constituent units. It also exercises the power of judicial review and adjudges the validity of legislative acts. *Fourthly*, a federal constitution is necessarily a written constitution. The Indian Constitution is also a written one. It is also more or less rigid.

Despite these features of a federal constitution, the Indian federal system is unitary in spirit. There is more emphasis on unity than on Union. The Constitution provides for a very strong centre. The Union Government has vast powers *vis-a-vis* the Governments of the States : (i) The scheme of distribution of subjects between the Centre and the States is in favour of the former. The Union List contains more important subjects, which are also larger in number. (ii) As provided under the emergency provisions, the Union Executive and Union Parliament can direct a State Government in the use of its powers or assume all of its powers. (iii) Article 249 empowers the Parliament to legislate on any matter included in the State List. (iv) The concurrent sphere is also the reserve of the Centre, where it can intervene at will and oust the State authority. (v) Under Article 3 of the Constitution, the Parliament can by a unilateral action establish new states, increase or decrease the area of any state, change the name of any state, alter its boundaries or cause it to disappear (as it happened to Hyderabad) by merging it with other states. This power of the Parliament, according to Justice P.B. Gajendragadkar, is completely destructive of the essence of a federal state, which is supposed to be composed of units with co ordinate but limited powers.* Besides, (vi) the Governors of the States are appointed by the President and they remain in office during his pleasure. (vii) The material provisions with regard to the financial structure also make the Union powerful in relation to States. Apart from these overriding powers of the Centre, the single constitutional frame, the integrated judicial system, the organisation of the administrative services, the centralised electoral machinery, the single citizenship etc. etc. also emphasise the unitary bias of the Indian Constitution.

* Gajendragadhar, P B. : *The Constitution of India*, P. 65.

Partly rigid and partly flexible

The Indian Constitution is partly rigid and partly flexible. It is rigid in so far as the method of amendment for some of its provisions is not easy. Neither the Union Government nor the Governments in the States can change them by a unilateral action. Besides, these provisions can be amended only by the method prescribed in the Constitution. And this method is different from that designed for ordinary legislation. The Articles to which this method of amendment is applicable are those dealing with : (a) the election of the President ; (b) the extent of the executive power of the Union and the States ; (c) the powers and jurisdiction of the Supreme Court and the High Courts ; (d) the distribution of powers ; (e) any of the Lists in the Seventh Schedule ; (f) the representation of States in Parliament, and (g) Provisions of Article 368.

For an amendment to any of the Articles relating to these subjects, a bill is passed not only by both the Houses of Parliament with a double majority (*i.e.* a majority of total membership and a two-thirds majority of the members present and voting) but the proposed amendment is also to be ratified by the legislatures of not less than half of the States.*

Despite the element of rigidity in it, the Indian Constitution is flexible in character.† It is evident from the ease with which the majority of its provisions can be amended. In their case the Constitution can be changed by a single majority vote in the Parliament. There is no need of any ratification by the States. The Constitution is also flexible in the sense of its being elastic. It can be both federal and unitary according to the requirements and circumstances. In times of war, insurrection or breakdown of the constitutional machinery in a State, it can be made to function as a unitary one. But, after the emergency is over, it can resume its normal form without any damage to its essence. This unique blend of rigidity and flexibility in respect of amending process was designed to meet a variety of circumstances. It has won the praise of a constitutionalist of the eminence of Dr. Wheare. He writes : "The Indian Constitution strikes a good balance between extreme rigidity and too much flexibility."

*The requisite majorities cannot be easily obtained under the prevailing conditions.

†We have advisedly made our Constitution flexible. As the Constitution is very elaborate and detailed, it would have been a mistake to make it rigid and to have made the amendment of its provisions difficult. *Chagla, M. C. : An Ambassador Speaks* P. 32.

Indian Constitution—A Social Document

The Indian Constitution, in the words of Granville Austin, is first and foremost ■ social document. The majority of its provisions seek to bring about a social revolution by reconstructing the Indian social structure on modern foundations (of law, individual merit and secular education). The core of the commitment to this social revolution, however, lies in Parts III and IV of the Constitution. The Fundamental Rights embodied in its Part III attempt to create a social order in which all citizens are equally free from the coercion and restriction by the State ; and liberty is no longer the privilege of the few. Part IV relating to the Directive Principles of State Policy contains even a clearer statement of the social revolution. Its provisions aim at making the Indian masses free in the positive sense, free from centuries-old passivity, free from abject physical conditions that had stood in the way of their material, moral and physical development. Thus, the Indian Constitution is a document of striking social significance. It seeks to achieve the goals, which the social reformers spread over a very long period of Indian history could not attain.

Universal Adult Suffrage

The Indian Constitution has adopted the principle of adult suffrage. Now, every Indian citizen (man or woman) of 21 years or above has the right to vote in the elections to the various representative bodies like the House of People and the State Legislative Assemblies. Moreover, the citizens of India now vote as individuals and not as Hindus, Muslims and Christians.

Some members of the Constituent Assembly did not favour the introduction of adult suffrage. They held that adult franchise and rule by the ballot box were not suited to the poor and illiterate masses of India. But this argument of theirs did not find favour with the majority in the Assembly. Mr. Alladi Krishnaswami Ayyar observed : "We have adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule, and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort, and the decent living of the common man."* Sardar K.M. Panikkar expressed the view that the adult suffrage was essential for "the acceptance of the fullest implication of democracy."

The introduction of adult suffrage at one stroke and without any qualifications and in a backward country like India was,

*C. A. D. XI, 9, 8 35.

indeed, a very bold step. It was feared that instead of furthering the cause of democracy, the adult suffrage would prove suicidal to its very existence. Though the results of the subsequent elections have fairly justified the faith reposed by the Fathers of the Constitution in the common man, yet it is too early to say anything with certainty. For, the recent defections in the legislatures have given the impression that the universal suffrage does not ensure the selection of the best persons.

A unique document drawn from many sources

It is often alleged that the Constitution of India is purely a Western charter.* A large number of its Articles, either in wording or in content, have been borrowed from foreign constitutions. The influence of Great Britain is particularly paramount, not only as expressed through the 1935 Act, but also through the adoption of the parliamentary form of government. The federal idea owes much to the United States and Australia. From the Irish Free State came the inspiration of part IV, which contains the Directive Principles of State Policy. The idea of a detailed list of Fundamental Rights, which form Part III of the Constitution, is derived from the United States. Hence, the only originality that our Constitution can claim consists in the freedom of choice exercised by its authors in picking and choosing from the various Constitutions of the world.

Our Constitution is, no doubt, drawn from a variety of sources. But its borrowings and adaptations should, in no way, belittle its value. For, the constitutional forms and principles are not the 'copyright materials patented by particular countries'. Besides, the Fathers of the Indian Constitution did not pretend to produce anything entirely new. Their primary object was to produce a good and workable constitution. This object they achieved with a commendable success. Even the celebrated constitutionalists of the West admit that the Indian Constitution is an ably conceived and drafted document, showing a creative, if not an original, approach to the nation's constitutional needs".† As a matter of fact, instead of criticising our Constitution-makers for the borrowings

* K. Hanumanthaiya lamented, "We wanted the music of Veena or Sitar, but here we have the music of an English band". Lokanath Misra observed "the Constitution is a slavish imitation of—nay, much more—a slavish surrender to the West".

†This is amply borne out by the success of democratic, parliamentary government in India, for it is quite possible to govern badly with a good constitution, it is nearly impossible to govern well with an inadequate one—Austin.

and adaptations, the critics should give them credit for their spirit of accommodation.*

Fundamental Rights

The Indian Constitution in its Part III embodies a set of Fundamental Rights, which are guaranteed to all Indian citizens and, in some cases, even to those, who are not Indian citizens. These rights ensure the fullest physical, mental and moral development of an individual and provide those basic freedoms and conditions, which alone can make life worth living. They also provide standards of conduct, citizenship, justice and fair-play and preserve the blessings of liberty. They are, therefore, to be looked upon as inalienable rights of an individual, which every human being is entitled to enjoy, if he is to maintain his human dignity.

The Fundamental Rights guaranteed by the Indian Constitution are divided into seven parts : (i) the Right to Equality, (ii) the Right of Freedom, (iii) the Right against Exploitation, (iv) the Right to Freedom of Religion, (v) Cultural and Educational Rights, (vi) the Right to Property, (vii) the Right to Constitutional Remedies. These rights secure to all citizens equality before law, equality of opportunity, freedom of thought and expression, security of property and freedom of vocation, residence, faith and belief. Besides, these rights have been made justiciable. The citizens can demand their enjoyment and the breaches of the same can be brought to the notice of the law courts. It is the duty of the courts to issue necessary orders, directions and writs for the enforcement of the infringed rights.

These Fundamental Rights are, however, not absolute. They are directly restricted by the Constitution, which prescribes various exceptions, limitations and qualifications. The Constitution has made express provisions dealing with such limitations of fundamental rights so that those who seek to enjoy the rights may also realise the obligations devolving upon them.

Directive Principles of State Policy

The Directive Principles of State Policy form another important feature of the Indian Constitution. They lay down guidelines for state policy and also the kind of social order, which has

*The Constitution as it ultimately emerged, writes J. M. Shelat, is an indigenous product, born of long endured grievances against colonial rule, the lessons which the Second World War taught, the peculiar conditions prevalent in the country and the diverse and sometimes conflicting claims of different sections of our society”.

to be built up. They exhort the State to ensure for its people adequate means of livelihood, fair distribution of wealth, protection of child and adult labour, decent standard of living, full enjoyment of leisure and social and cultural opportunities, compulsory education for children up to the age of fourteen, the promotion of the educational and economic interests of the weaker sections of the society etc. etc. In the words of J. M. Shelat, "The Directive Principles deal with diverse topics from social, economic and educational matters to separation of judiciary, decentralisation of power, preservation of ancient monuments and fostering of international peace".

The general tendency of these Directives is, obviously, to introduce a wide measure of socialism in the economic sphere, to provide social security and better standards of sanitation to emphasise the duty towards women and children and the obligations towards backward and tribal classes. If all these principles were fully carried out, writes M.C. Chagla, "our country would indeed be a heaven on earth. India would then be not only a democracy in the political sense, but also a Welfare State looking after the welfare of the citizens—a state in which there will be economic equality between its different citizens and in which every one would have the same opportunity to educate oneself, to work and to reap the reward of one's labour."

The Directive Principles are, however, not enforceable by any court, nor the Constitution imposes any duty on the State to apply these principles in making laws. Nevertheless, their inclusion in the Constitution is not without value. They outline the ideal of a Welfare State. They stand the greatest guarantee for a genuine democracy in India. They provide the real yard-stick to measure the social and economic progress of the Indian people. They provide a code of conduct for the Indian administrators and legislators.

Single Citizenship

The Indian Constitution has established a single and uniform citizenship for the whole of India. The citizens owe allegiance only to the Indian Union. There is no second-class citizenship. This is in striking contrast to the system of double citizenship that prevails in some of the federal states. For example, in the United States of America a citizen of the United States is also a citizen of one of the Constituent States. The Indian Constitution does not recognise state citizenship. There is only one citizenship and

that is Indian citizenship. The provision of single citizenship is a great step forward in the creation of an integrated Indian society. As a result, the citizens of India are clothed with common civil and political rights all over the country.... Besides, a single citizenship removes much of the artificial state barriers that prevailed in pre-independence days and facilitates the freedom of trade, commerce and intercourse throughout the territory of India.*

Independence of Judiciary

The Judiciary under the Indian Constitution is made independent of the Executive and there are provisions in the constitutional charter to ensure its independence. The Constitution lays down rigid qualifications for the appointment of the judges. The President of India is bound to consult the Chief Justice of India in the appointment of every judge of the Supreme Court and the High Courts. The judges are appointed almost for life and their conditions of service cannot be altered to their disadvantage. They are given high salaries and their conduct is made a subject beyond the scope of discussions in the Legislatures. They cannot be removed from their office arbitrarily. The Constitution provides a strict procedure for their removal. To make the judiciary independent, impartial and uncorruptible, our Constitution recommends separation of executive and judicial functions even at the lower levels.

It is, however, encouraging that the role of the judiciary in India has been quite satisfactory. It is noted for its independence, impartiality and integrity. A review of its achievements during the last 20 years amply reveals that it has worked as a watch-dog of the rights of individuals. It has also helped to ensure the successful working of the parliamentary system of government in our country.

Judicial Review

The Indian Constitution has specifically provided for (Arts. 13, 32, 131, 136, 246) the judicial review. In the exercise of this power, the courts of law can declare the constitutionality or otherwise of a legislative enactment. The provision of judicial review in the Constitution is quite significant, and precisely for two reasons : In the first place, it signifies that our Constitution places confidence and trust in the judiciary to interpret its provisions and to uphold its dignity. Secondly, it negatives the plea

*Pylee M. V. : *Constitutional Government in India* P. 175

that it is only the elected representatives, who exclusively reflect the changing currents and reflexes of public opinion, especially in a country, where vast sections of the electorate are unlettered.

The scope of judicial review in India is, however, not as wide as it is in America. But, at the same time, it is not very much restricted.* It is sufficient to make the Supreme Court a powerful agency to control the authority of both the Legislature and the Executive. Our Supreme Court has asserted its constitutional authority and has exercised the power of judicial review in as many cases as possible.

THE NEW CONSTITUTION AND THE ACT OF 1935

It is often contended that the new Constitution of India has been largely modelled on the Government of India Act, 1935. Its size, contents, general scheme and even language of some of its provisions bear the clear stamp of its indebtedness to the preceding Act. Approximately, 250 of its Articles have been taken, either word for word or with minor changes in the phraseology, from that Act, and the basic principles remain unchanged. To quote Ivor Jennings : "The Constitution derives directly from the Government of India Act, 1935 from which, in fact, many of its provisions are copied almost textually".† Our Constitution, indeed, stands indebted to the Act of 1935, both in its language and substance.

The phraseological resemblance

There is a close phraseological resemblance between the provisions of the Act and those of the Constitution. A critical study of the following few examples will be useful in this context :

1. Article 256 of the Constitution provides that 'the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament...and the executive power of the Union shall extend to the giving of such directions to a State as may appear to be necessary for that purpose.' It follows the language of Section 126 of the 1935 Act almost word for word.

2. Article 251 of the Constitution dealing with a conflict between the Union and the State laws is, with one interesting

*As far as judicial review is concerned, India stands between the two extremes, the parliamentary supremacy in Britain and the judicial supremacy in the United States.

†Jennings : *Some Characteristics of the Indian Constitution*, P. 17

difference, an exact copy of Section 107 of the 1935 Act.

3. Articles 352 and 353 of the Constitution, relating to the declaration of emergency by the President, have much in common with Section 102 of the Act, in point of their phraseology.

4. Article 356 dealing with the breakdown of the constitutional machinery in the States is a terminological twin of Section 92 of the Act,

Correspondence in Principles and Substance

Besides their resemblance in point of phraseology, the 1935 Act and the Constitution bear close correspondence in respect of principles and substance. A comparative study of the two constitutional charters reveals the extent to which the Constitution has borrowed its substance from the preceding Act.

(a) The Government of India Act, 1935 envisaged a scheme of an all-India federation, which did not possess many a formal characteristic of a federal system. Hence, it was a peculiar type of federation. Our Constitution has also established a federal polity which is, on account of its distinctive features, a class by itself. Mr. K. Sathanam has coined for it a new phrase viz. 'Paramount Federation.' Besides, the general pattern of the federal frame-work, as provided in the working Constitution, is the same as was contemplated by the Act of 1935.

(b) The Constitution Act of 1935 provided for the division of legislative powers into three elaborate Lists—the Federal, Provincial and Concurrent Lists. These three Lists embodied respectively 59, 54 and 36 subjects. Under the Constitution, also the items of legislation are divided into three Lists viz ; the Union List (97 subjects), the State List (66 subjects) and Concurrent List (47 subjects). Besides, the substance of the scheme of division of powers between the Union and the States is the same as was provided for in the Act of 1935.

(c) In the federation contemplated under the Act of 1935, the federal principle was modified by unitary elements in the form of control by the Centre to an extraordinary extent. The Governor-General was given such vast powers of intervention in the affairs of the Provincial Governments that he could manage to change the federation into a unitary government. The same is true of the federal polity established under India's new Constitution. As a result of the Proclamation of Emergency

the federal character of our Government can be transformed into a unitary one. The power of issuing the Proclamation rests with the President.

(d) The 1935 Act made provision for the introduction of a second chamber at the Centre and also in some of the Indian Provinces. Our Constitution also provides for a bicameral Union Legislature, having Council of States (*Rajya Sabha*) as its upper chamber. In some of the States also bicameral legislatures have been provided under Article 168 of the Constitution. The Upper House of the State Legislatures is known as Legislative Council or *Vidhan Sabha*.

(e) The 1935 Act incorporated a number of safeguards to ensure the proper functioning of responsible government in India. But they were, in fact, restrictions and limitations imposed either on the competence or the exercise of the powers by the Government of India. Our present Constitution also embodies a chain of safeguards to ensure the successful working of the democratic government. The provisions relating to the Election Commission, the Public Service Commission, the control of the Supreme Court over the High Courts, the authority of the Centre to take over the administration of the States both in normal and abnormal conditions, the protection of the religious, cultural and linguistic rights of the minorities etc. etc. may be enumerated as some of these safeguards.

As a matter of fact, before the new Constitution was framed and adopted, the Government of India Act, 1935 was the constitution of our country. Despite its much criticised complexity and detail, it had, for a decade or so, on the whole, worked well. It was difficult for *the* New India to throw it aside. The more so, when the administrative machinery inherited from the British was to continue. Justice J. M. Shelat rightly observes : "The Constituent Assembly, however much it had wished, could not drift away from the immediate past A large number of its (1935 Act) provisions had, therefore, to be included into the new Constitution, particularly those) relating to the federal structure." Moreover, the fathers of our Constitution were men of deep wisdom and broader outlook. They did not find it disparaging to borrow from the Act all that could suit the national needs. Dr. Ambedkar, the Chairman of the Drafting

Committee frankly admitted : "As to accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a constitution. What I am sorry about is that the provisions taken from the Government of India Act 1935, relate mostly to the details of administration".

Not a 'Glorified Edition of 1935 Act'

In spite of its large borrowings and adaptations from the preceding charter, our new Constitution is not a 'glorified edition' of 1935 Act. If the phraseological resemblance between the Act and the Constitution is quite notable, the difference of spirit between the two is also no less striking. The departures made by the Constitution may be fewer than the points of verbal correspondence, but they have definitely a far greater significance.

The Act of 1935 was a constitution framed by the British Parliament for our country. It was imposed upon the Indians against their wishes by an external authority, which had kept the substance of the power in its hands through its powerful agents in the persons of Governor-General and Governors in India. The new Constitution, on the contrary, is the constitution of a free nation, framed by its own representatives and deriving its authority from the will of the people. To quote Amar Nandi : "The Act of 1935 represented the grudging concession of limited self-government to a dependent people by the foreign masters ; the Constitution of India is a fundamental law framed by a completely free nation to regulate its affairs".* Apart from this, its enactment by our own countrymen signifies the end of the alien rule over India, making us the complete masters of our political destiny. Mr. K. Santhanam writes, "Though many articles have been taken word for word from the Government of India Act 1935 the basis has changed altogether. From British Parliament the sovereignty has moved to the people of India."

Secondly, the new Constitution embodies in it two especially vital chapters : one on the Fundamental Rights of the citizens and the other on the Directive Principles of State Policy. The proclamation of the Fundamental Rights has given a new dignity to the Indian citizens, while the Directive Principles of State Policy have

*Nandi A. : *The Constitution of India*, P. 47

provided a constitutional basis to the Welfare State in India. The Government of India Act, 1935 possessed neither of these commendable features.

Thirdly, under the Act of 1935, the franchise was very limited. Only ten per cent of the population of India had the right to vote. Besides, the Act provided for a notorious system of communal electorates, which divided the Indian society into various unhealthy communal compartments and thus thwarted the growth of genuine democracy. The new Constitution has made a clean sweep of the principle of communal electorates and has provided universal adult suffrage in its place. Now, the right to vote has been extended to every adult citizen of India (man or woman), thus making him or her a sharer in the formation of the government.

Fourthly, the new Constitution has ensured the proper working of the parliamentary government in India. It has made the executive fully responsible to the legislature both at the Centre and in the States. The Union Cabinet, as also the Cabinets in the States, are made quite powerful in their respective spheres, and the President and the Governors are their constitutional heads. No such conditions existed under the Act of 1935. The central ministry, created to aid and advise the Governor-General of the British regime, had no effective voice in the administration, nor was the Governor-General a constitutional head like our President. Besides, the principle of ministerial responsibility was not adhered to in the real sense of the term. All this was primarily due to the paramount position of the Governor-General, whose special responsibilities and discretionary powers made him practically a dictator in the central sphere. Even the scheme of Provincial Autonomy, hedged in by a large number of reservations, did not ensure a full-fledged responsible government in the Provinces.

Fifthly, under the 1935 Act, there existed a marked and mischievous distinction between the British India and the Indian States. The new Constitution has done away with it and has brought the entire country under a single, uniform polity. A democratic set-up is in consequence assured to all the units and the same Constitution applies to them all.

Sixthly, the Act of 1935 made no provision for the amendment of the Constitution by the federal or local legislatures. The power of amending the Constitution rested with

the British Parliament. But the present Constitution of India vests this power in the Central Legislature, which, however, requires the consent of at least one-half of the State Legislatures to amend some specified provisions of the Constitution.

Lastly, it may also be pointed out that the Act of 1935 had no Preamble of its own. It borrowed its Preamble from the Act of 1919. But our new Constitution has its own Preamble, which is quite significant. Besides, the judiciary under the new Constitution is made more powerful than it was under the 1935 Act.

To sum up, the new Constitution, despite all its borrowings and adaptations is not a true copy of the 1935 Act. It stands four-square and distinct from the preceding Act, both in points of its provisions and spirit. Hence, it does not seem fair to support Dr. Punjab Rao Deshmukh's observation : "that the new Constitution is essentially the Government of India Act, 1935 with only adult franchise added."

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CHAPTER 22

The Preamble and Territory of the Union

I—THE PREAMBLE

The preamble is a sort of preface or introduction to an Act of Parliament or a Constitution. Though, strictly speaking, it does not form ■ part of the constitution, yet it definitely affords a key to its spirit and meaning*. It sets out the objectives, for the achievement of which a constitution is framed. The Indian Constitution, like many other constitutions of the world, also begins with a Preamble, which is claimed to be one of the best of its kind ever drafted. The Preamble to our Constitution is at once buoyant and stirring. It solemnly proclaims—

“We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and secure to all its citizens :

JUSTICE—social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and opportunity ; and to promote among them all :

*It can neither be ■ subject of enforcement by the courts nor of any interpretation by them.

FRATERNITY assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Significance of the Preamble

The Preamble to the Indian Constitution is a short but significant statement. It is not merely a preface to the Constitution but is the very basis of it. It beautifully proclaims the source of the Constitution, its basic objectives and also the date of its adoption. Besides, it is a sort of telescope through which one can perceive clearly the intentions of the Constitution-makers engraved on the various parts of the Constitution. Pandit Thakur Das Bhargava, a member of the Constituent Assembly, applauded the Preamble in these words : "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution...It is a jewel set in the Constitution. It is a superb prose-poem, nay, it is perfection in itself."*

Some critics of the Indian Constitution hold the view that Mr. Bhargava has praised the Preamble in somewhat enthusiastic terms. The Preamble does not deserve the appreciation, which it has received at the hands of such admirers. This view of the critics now seems untenable. For, the celebrated scholar of the eminence of Prof. Ernest Barker has also paid a glowing tribute to the political wisdom of the authors of our Constitution. In his recent work entitled 'Principles of Social and Political Theory' he has printed the Preamble to our Constitution after the Table of Contents. In explaining his reason for this, he writes in the Preface to his work : "It seemed to me, when I read it, to state in a brief and pithy form the argument of much of the book ; and it may accordingly serve as a key-note. I am the more moved to quote it, because I am proud that the people of India should begin their independent life by subscribing to the principles of a political tradition".

The opening words of the Preamble (We, the people of India) point out that the Constitution has been drafted, enacted and ordained by the people of India. The people of the Union are the real source of authority or sanction behind the Constitution.

*Bhargava, Thakur Das C. A. D. X, P. 682

It is they, who constitute the ultimate and real sovereign, and the Government, which is the creature of the Constitution, is its agent. While explaining the significance of the phrase 'We, the people' of the Preamble, Pandit Jawaharlal Nehru had thus observed : "These words indicate that our Constitution is created not by States, nor by the people of several States. Hence, it is not open to any one or more of the States of the Union to put an end to our Constitution or to secede from the Union created by it"*.

The Preamble to our Constitution also proclaims that the people of India have resolved to constitute India into a 'Sovereign Democratic Republic'. With the inauguration of the present Constitution on January 26, 1950, India has attained this political status. She is no more a dependency of the British Empire nor is her political status that of a dominion. On the other hand, she is a Sovereign Democratic Republic, in which all power, in matters external and internal, is exercised by the Government of the Union or Governments of the States. She is Sovereign in the sense and manner as Great Britain, U. S. A., U. S. S. R. and Swiss Republic are. Besides, India is a Republic having a constitutional head elected by the people for a fixed period. She has adopted the democratic way of life. It is evident from the working parliamentary system, fundamental rights, free political parties, a free press and freedom of propaganda, an independent judiciary, etc etc. Edward D' Cruz observes : "There is a splendid blue print of democracy in our Constitution".

The Preamble proceeds further to define the objectives, which the Constitution established by the people is to achieve. They are : justice, liberty, equality, fraternity and national unity. Among the objectives thus enumerated by the Preamble, a place of pride is given to social, economic and political justice. It is, indeed, very inspiring. For, it holds forth the assurance that the Democratic Republic of India shall be a Welfare State committed to the ideal of socio-economic justice.† And this socio-economic justice shall be obtained in a democratic way by the rule of law. Thus, the Preamble in the lucid and expressive words emphatically

*Jawaharlal Nehru : *C. A. D. I*, Pp. 55-6.

†The concept of socio-economic justice was interpreted differently by different persons in the Constituent Assembly. But, according to Dr. Radha Krishnan, it intended to effect a smooth and rapid transition from ■ state of serfdom to one of freedom.'

brings out the socio-economic content of political freedom. It expresses the feeling that political freedom, without social and economic justice, will have no significance for the masses of the country. If political freedom is to have any meaning to the masses of India, it is essential that socio-economic justice be achieved.

To ensure social, economic and political justice, the Preamble emphasises the need of securing liberty, equality and fraternity for the people of India. Hence, the next objective to be achieved by the Democratic Republic of India is liberty of thought, expression, belief, faith and worship. The Preamble, likewise, proclaims its faith in the doctrine of equality of status and opportunity. It also expresses as one of the objectives of the Constitution to establish a sense of fraternity by which the dignity of the individual and the unity of the nation is guaranteed. The Preamble to the Indian Constitution thus embodies the basic philosophy of our Constitution. Justice P.B. Gajendragadkar, the former Chief Justice of India, has beautifully summed up the message of the Preamble in these words : "India is one country, and there is only one citizenship in India. India is committed to the ideal of the welfare state and must establish socio-economic justice. India is committed to democracy and respects individual liberty, and India wants to give to all her citizens equality of status and opportunity, thereby attempting to create a mighty brotherhood of Indian citizens, which would assist the Sovereign Democratic Republic of India in reaching its proclaimed objectives."*

The Preamble is said to be a guiding star in interpreting the Constitution. Where the language of the Statute is not clear, the Preamble can be referred to in order to explain it. The Judiciary in India was hesitant in the beginning in taking the help of the Preamble. The Supreme Court displayed this attitude in *A.K. Gopalan vs. State of Madras* (1950). But the court has now started seeking its aid in interpreting the specific provisions of the Constitution. The case of *Golaknath vs. State of Punjab* (1967) is an illustration in point.

Thus, we find that the Preamble to the Constitution occupies a place of pride in the document. It embodies the laudable objective of socio-economic justice and gives an inspiring picture of the future of India. It is unrivalled both in expression and

*Gajendragadkar P.B. : *The Constitution of India*, P. 14.

ideals, and indicates the source, the sanction, the pattern, the objectives and the contents of the Constitution.

Provisions to implement Preambulary declarations

There are a number of provisions in the Constitution of India intended to secure the implementation of the preambulatory declarations. The chapter on Fundamental Rights (Part III) is of particular significance in this context. It embodies many special provisions (Art. 16 (2), (4) ; Art. 23 and part XVI) for the backward classes and the weaker sections of the society, which seek to secure the primary objective of socio-economic justice. Arts. 19-22 of the same chapter seek to implement the objective of liberty by guaranteeing to the people the right to freedom of speech, freedom of assembly, freedom of movement etc. etc. Arts. 23 and 24 guard against exploitation, while Arts. 25-28 ensure the freedom of religion. In Arts 14-18 of the Constitution an attempt has been made to ensure equality before law by prohibiting discrimination on grounds of religion, race, caste, place etc. The Constitution has also provided for the abolition of untouchability and titles as they are inconsistent with the principle of equality. The preambulatory concept of socio-economic justice has been translated by the Constitution-makers also into specific provisions of Part IV of the Constitution. They emphasise the need to improve social and economic condition of the people. To sum up in the words of Justice J.M. Shelat : "the targets set out in the Preamble (of justice, liberty, equality, fraternity, dignity of the individual and the unity of the nation) are sought to be achieved through the Fundamental Rights and the Directive Principles enshrined in Parts III and IV of the Constitution.*

II—TERRITORY OF THE UNION

Articles 1-4 of our Constitution are related to the Union and its territory. Art. I states that India, that is Bharat, is a Union of States.

Area, Population and resources

The Indian Union is a large country. From the stand-point of her area, she is the seventh largest country in the world.† She has an area of 1, 261, 597 Sq. miles. From Kashmir to Cape Comorin it is 2,000 miles long, and nearly 1,850 miles across from

*Shelat J.M. : *The Spirit of the Constitution* P. 12.

†Soviet Union, China, Canada, the United States, Brazil and Australia are larger than India in area.

Kutch to Assam. Its sea-frontiers and land frontiers are respectively 3535 and 9,425 miles. In population, India stands second only to China. According to 1961 Census, India's population was about 44 crores, but now it has risen to 55 crores. Thus, both in point of territory and population, India is one of the really important countries in the world. She is roughly two-thirds of the size of Europe excluding U. S. S. R. or thirteen times that of Great Britain.

India is sufficiently rich in resources of all kinds—plants, animals, soil, minerals etc. She has also unlimited water resources. Besides, she has some of the loftiest peaks, the biggest plains and the longest rivers. Her climate ranges from the tropical heat to the temperate cold of the mountaneous regions. She is also distinguished for her linguistic as well as racial diversity.

Component States and Union Territories

The Indian Union at present consists of 18 States and 9 Union Territories. Her States include Andhra Pradesh, Assam, Bihar, Gujrat, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal, Jammu and Kashmir, Nagaland, Haryana and Himachal Pradesh. Among these states Madhya Pradesh is the largest (171, 210 sq. miles), while Nagaland, with its area only of 6236 sq. miles, is the smallest. The Union Territories in the Indian Union are : (1) Delhi, (2) Manipur, (3) Tripura, (4) Andaman and Nicobar Islands, (5) Laccadive, Minicoy and Amindivi Islands, (6) Dadra and Nagar Haveli, (7) Pondicherry, (8) Goa, Daman and Diu, (9) Chandigarh.

Provisions with regard to territorial adjustments

The Union Parliament has very wide powers with regard to the territorial adjustments and other alterations in the States. It has been empowered to make laws to admit into the Union, or establish new States on such terms and conditions as it thinks fit. Art. 3, as amended in 1955, provides that Parliament by law may ;

(a) form ■ new state by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State.

(b) increase or diminish the area of any State.

(c) alter the boundaries and name of any State.

It has been provided that no Bill making any of these changes can be introduced in either House of Parliament except on the

recommendation of the President. If the Bill affects the boundaries of any State or name of such a State or States, the President is to ascertain the views of the Legislature of the State or Legislatures of the States as the case may be. The President is, however, under no obligation either to accept these views or to obtain the consent of the States concerned to the provisions embodied in the Bill. Obviously, it means that the Union Government alone has the authority to take final decision on such matters.

Art. 3, however, does not empower the Parliament to cede, by a simple legislation, territory in favour of a foreign state. It only deals with the reorganisation of States in the Indian Union. Commenting on Art. 3 of the Constitution, Mr. K. Santhanam writes : "I do not object to the provision on its merit, but it definitely shows that States have been put in a subordinate position and the fundamental principle that a federation depends upon the integrity of the States seems to have been lost."*

During the last twenty years the component units of the Indian Union have undergone various alterations. The Parliament by upgrading and bifurcation has created many new States, as Andhra (1953), Maharashtra and Gujrat (1960), Nagaland (1961), Haryana (1966) and Himachal Pradesh (1970). Some political parties are making demand for the grant of statehood to the Union Territory of Delhi too. But the Government is not in favour of it, because Delhi, being the Capital of India, has its own problems. Moreover, it is not proper to have two governments at the same place. The claim of Manipur for statehood has also not been acceded to.

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CHAPTER 23

Citizenship

Before India achieved freedom in 1947, all Indians were considered British subjects owing allegiance to the British monarch. With the inauguration of the new Constitution, the position has altogether changed. Now the vast majority of the Indian Republic, which consists of her natural born people, are Indian citizens. The Law of Indian citizenship is contained in Arts. 5—11 of the Constitution and the Citizenship Act of 1955. The Constitution has, as a matter of fact, made only tentative provisions regarding citizenship. It has conferred powers on Parliament to pass a comprehensive legislation with regard to it.

Nature of citizenship in the Indian Republic

The Indian Constitution, despite its federal character, does not provide for 'dual citizenship'. The States and the Union do not have separate citizenship as is the case in the United States of America. In India, there is only one citizenship, the citizenship of India. This uniform citizenship not only prevents fissiparous tendencies but also ensures greater solidarity of the nation. Moreover, it avoids all complications of dual citizenship.*

CITIZENSHIP AT THE COMMENCEMENT OF THE INDIAN CONSTITUTION

Arts. 5, 6, 7 and 8 lay down as to who are to be considered as citizens of India.

*In the United States dual citizenship has given rise to many inter-state problems.

(a) Citizenship by Domicile (Art. 5)

Under Art. 5 every person, who had his domicile in the territory of India at the commencement of the Constitution, was accepted as citizen if :

- (a) he was born in the territory of India ; or
- (b) either of his parents was born in the territory of India ; or
- (c) who had been ordinarily residing in the territory of India for not less than five years immediately preceding the new Constitution.

(b) Citizenship of persons who have migrated to India from Pakistan (Art. 6)

Partition of India created various problems relating to citizenship. Lakhs of people, who were residing in the territory now included in Pakistan, had to leave their homes and came to India. For the purpose of granting them the citizenship such persons were divided into two categories : (a) Persons who migrated to India before July 19, 1948 ; (b) persons who migrated to India on or after 19th July, 1948. Under Art. 6 of the Constitution, the right of citizenship was extended to such persons. It provided that a person, who had migrated to the territory of India from Pakistan, shall be deemed to be a citizen of India if :

- (a) he or either of his parents was born in India.
- (b) he had migrated to India before July 19, 1948 and had been residing in India since the date of his migration.
- (c) he had migrated on or after 19th July, 1948 and had been registered as a citizen of India through an officer appointed on that behalf by the Government of India.

(c) Citizenship of migrants (Art. 7)

Partition of India created problems also on account of migration and re-migration. Many persons, who were residing in India, migrated to Pakistan. On being disillusioned, they re-migrated to India. Art. 7 covers the problems, which arose as regards citizenship of such persons. It denies citizenship to those, who migrated to Pakistan after 1st March, 1947, but exempts those, who have returned to India from Pakistan under permits seeking permanent settlement in India.

(d) Citizenship of persons of Indian origin outside India or Pakistan (Art. 8)

Our Constitution under Art. 8 extends rights of citizenship even to those persons, who are residing abroad, if :

- (a) they or their parents or grandparents were born in India, and
- (b) they have been registered as citizens of India through the diplomatic or consular representative of India in the country of their residence.

ARTS. 9, 10, 11 AND THE CITIZENSHIP ACT, 1955

Art. 9 expressly provides that if a person had voluntarily acquired citizenship of any foreign state before the commencement of the Constitution, he shall have no claim to Indian citizenship, even if his case is covered either by Art. 5 or 6 or 8. It should be noted that this Article (9) does not apply to cases of voluntary acquisition of citizenship of a foreign state, after the commencement of the Constitution. Such cases are covered by Art. 11.

Art. 10 lays down that 'Every person, who is or is deemed to be a citizen of India under any of the foregoing provisions,...shall continue to be a citizen of India' subject to the provisions of any law that may be made by Parliament.

Art. 11 of the Constitution empowers Parliament 'to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.' In exercise of the powers vested in it by Art. 11, the Indian Parliament enacted the well-known Citizenship Act of 1955.

The Citizenship Act, 1955 is a comprehensive measure. It deals with future citizenship, its acquisition and termination. Its provisions may broadly be divided into the following three parts :

(A) *Acquisition of citizenship*

The Act provides five modes of acquiring Indian citizenship. A person can become the citizen of India by any one of them :

(i) *By Birth.* According to section 3 of the Act, every person born on or after 26 January 1950, shall be a citizen of India by birth. However, (a) children born to foreign diplomatic personnel in India and, (b) those of enemy alien, whose birth occurs in a place then under occupation by the enemy, shall not be citizens of India.

(ii) *By Descent.* As laid down by section 4 of the Act, a person born outside India, on or after 26 January 1950, shall be a citizen of India by descent, if his father is a citizen of India at the time of his birth. This provision is applicable also to children of those, who are citizens of India by descent, as also to children of

non-citizens, who are in service under the government of India, provided their birth is registered in accordance with the rules laid down in the Act.

(iii) *By Registration.* Persons of the following categories can also, on making an application, acquire Indian citizenship by registration.

(a) Persons of Indian origin, who are ordinarily resident in India and who have been so resident for six months immediately before applying for registration as citizens ;

(b) Persons of Indian origin, who are ordinarily resident in any country or place outside India ;

(c) Women, who are or have been, married to citizens of India ;

(d) Minor children of persons who are citizens of India ; and

(e) Persons of full age and capacity who are citizens of the Commonwealth countries.

(iv) *By Naturalization.* This mode covers all those persons who do not come under any of the categories mentioned above. A person seeking naturalization as citizen of India is required to fulfil the following conditions before a certificate of naturalization is granted to him.

(a) He is not a citizen of a country, which does not allow citizens of India to become its citizens by naturalization ;

(b) He has renounced the citizenship of the country to which he belonged ;

(c) He has either resided in India or has been in the service of a government in India for a period of not less than one year immediately preceding the date of his application for naturalization ;

(d) During the seven years preceding the above mentioned one year, he has either resided in India or has been in the service of a government in India for periods amounting to a total period of four years ;

(e) He is of good character ;

(f) He has an adequate knowledge of a language specified in the Constitution.

(g) In the event of naturalization being granted to him, he intends to reside in India, or enter into, or continue in service under a government in India.

However, the Government of India may waive any or all of the afore-said conditions in favour of persons, who have rendered

distinguished services in the cause of science, art, literature, world-peace or human progress.

(v) *By Incorporation of Territory.* If any territory becomes a part of India, the Government of India may specify the persons, who shall be citizens of India by reason of their connection with that territory.

(B) *Termination of Citizenship*

The citizenship Act, 1955 envisages the various situations under which a citizen of India may lose his citizenship. It also lays down the conditions with respect to this aspect of Indian citizenship.

1. *By Renunciation.* A citizen of India, who is also a national of another country, on making a declaration in the prescribed manner, can renounce his citizenship of India. When a male person so renounces his citizenship, every minor child of that person also ceases to be a citizen of India. Such a child can, however, become an Indian citizen, if he makes a declaration of his intention to resume Indian citizenship within one year after he attains the age of eighteen years.

2. *By acquiring citizenship of another country.* Any citizen of India, who voluntarily acquires citizenship of another country, ceases to be, upon acquisition of such foreign citizenship, a citizen of India.

3. *By Deprivation.* The Central Government may deprive a person of his citizenship by issuing an order under section 10 of the Act. But be it noted that the Government can use this power only in case of those, who have acquired Indian citizenship by naturalization or registration. The possible grounds of such deprivation, as stated in the Act, are :

(a) If the registration or certificate of naturalization was obtained by fraud, false representation, suppression of any material facts ; or

(b) If the person has by act or speech shown himself disloyal or disaffected to the Constitution ; or

(c) if he has unlawfully traded or communicated with the enemy during a war in which India is engaged, or

(d) if he has, within five years of his registration or naturalisation, been sentenced to an imprisonment for not less than two years ; or

(e) if he has been ordinarily residing outside India for seven years continuously.

The Act also provides for reasonable safeguards so that proper procedure is followed in every case relating to the deprivation of citizenship.

(C) *Commonwealth citizenship*

India is a member of the Commonwealth of Nations. Her Citizenship Act of 1955 provides for Commonwealth citizenship. As laid down by the Act, every person, who is a citizen of a Commonwealth country, by virtue of that citizenship, enjoys the status of a Commonwealth citizen in India. The Act does not make any distinction on ground of race or colour provided the Commonwealth country gives similar right to Indian nationals to acquire citizenship thereof.

Comments on Citizenship Act, 1955

The Citizenship Act has been aptly described as 'one of the most liberal enactments of its kind anywhere.' It provides for sufficiently easy and simple modes for acquiring Indian citizenship. It also recognises dual nationality under certain circumstances. The critic's view-point that the Indian citizenship has been made a cheap affair is hardly tenable. For, the modern conditions and circumstances make a pressing demand that every country should throw its doors open to any foreigner, who likes to migrate, settle and adopt it as his own.

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1. *M. V. Pylee* : Constitutional Government in India.
2. *T. K. Tope* : The Constitution of India.
3. *B. M. Sharma* : The Republic of India.
4. *S. C. Dash* : The Constitution of India : A comparative study.
5. : Citizenship Act, 1955.

CHAPTER 24

Fundamental Rights

'Fundamental Rights' constitute a salient feature of the Indian Constitution. They are set out in its Part III and are enforceable by the courts. Their incorporation in our Constitution is not something new. Almost every modern democratic constitution provides for basic rights and liberties of the citizen.* The American Constitution, for instance, embodies the celebrated 'Bill of Rights'. The Soviet Constitution, like the Weimer Constitution of Germany and the Constitution of the French Fourth Republic, also guarantees the classical freedoms. In the constitutions framed after the Second World War (like those of Yugoslavia, Italy and Burma) one invariably finds catalogues of fundamental rights or basic freedoms. Great Britain, of course, is an exception. There is no formal declaration of fundamental rights. The basic rights of Englishmen are safeguarded by the effective public opinion, tradition of liberalism and the application of the rule of law.

Importance of Fundamental Rights

The fundamental rights, in the words of Laski, "are those conditions of life without which no man can seek, in general, to be at his best." They include such classical freedoms as the freedom of speech, of life and liberty, of faith and conscience, of association and of property, which ensure the fullest physical, mental and moral development of an indivi-

*With the growing powers of Governments all over the World, it has become eminently desirable for any democracy to have fundamental rights which cannot be curtailed or abrogated. *N.A. Palkhivala*.

dual. The importance of such fundamental values of a civilized community, as an integral part of the constitution, cannot be over-emphasised. Even the British, whose constitution does not recognise any right of this kind, concede their value, though to a limited extent.

The fundamental rights, as referred to above, are *the only means of effective enjoyment of social, religious and civil life in a free democratic country*. They provide for those basic freedoms or conditions, which alone can make life worth-living. They protect the individual and minority groups from the arbitrary and prejudicial state action. They eliminate the danger of tyranny and preserve the blessings of liberty. They seek to establish healthy standards of conduct, citizenship, justice and fair play. They also strike a balance between the mounting state interference and personal liberty. In short, they ensure the welfare and enrichment of a citizen's personality and make his life secure and happy.

The fundamental rights are the soul of democracy. It is difficult to conceive of a genuine democracy without guarantees of such fundamental civil and political rights as : right to vote, freedom of speech, association, assembly and the press, as well as freedom from arbitrary arrest and right to *habeas corpus*. Again, fundamental rights set the conditions under which the will of the majority is to be formed and exercised. They establish the framework of 'democratic legitimacy' for the rule of majority and afford full freedom to the minority to convert itself into a majority. All this, in turn, contributes to the effective working of democracy, which essentially means the rule of the people by the people.

The fundamental rights are essential for preventing one-party dictatorship in the political life of a country. The danger of personal rule by despotic kings has, no doubt, practically disappeared, but that of majorities in a democratic state is still feared. A dominant group of legislators can pass any discriminatory or unjust measure and thereby harm the interests of considerable sections of the people. Fundamental rights serve as a safeguard against such possibilities. They protect the individual, especially minorities, against governmental autocracy and against the tyranny of the legislative majority.

The fundamental rights make a fitting adjustment between individual independence and social control. On the one hand, they remind the legislatures and executives to remain within the

limits prescribed by the law for them and not to trample over the citizens' rights. On the other hand, they provide opportunities for citizens to create public opinion against the arbitrary conduct of the government. Thus, the fundamental rights seek to establish harmony between the state and the individual and thereby promote the national solidarity.

The fundamental rights are also important in so far as they express the aspirations of under-privileged groups or classes or of developing nations. According to Profs. Carter and Herz 'under such circumstances they can become clarion calls of political movements, and their political impact may be much greater.'

The statutory enactment of the fundamental rights has further enhanced their value and significance. It has given them sanctity and a status higher than that of ordinary law. It has also made them inviolable, commanding the respect of the people and the government alike. The State is under an obligation to respect the fundamental rights in all its actions—legislative, executive and judicial. "In the background of the Constitution", observes Justice Saprú, "they are intended to make all citizens and persons appreciate that the paramount law of the land has swept away privileges and laid down that there is to be perfect equality between one section of the community and another in the matter of all those rights, which are essential for the material and moral perfection of men".*

Necessity of their insertion in the Indian Constitution

Some protagonists of the British constitutional system did not favour the idea of including a list of fundamental rights in the Indian Constitution. They held the view that the inclusion of a 'Bill of Rights' in a written constitution was 'unnecessary, unscientific and more often harmful.' It was also observed that abstract declarations were useless unless there existed the means and will to make them effective.

The Constitution-makers, who had amongst them a number of freedom-fighters, were not convinced by these arguments. They had a bitter experience of living under authoritarian rule. They fully realised the importance of basic personal freedoms, particularly, that of freedom from arbitrary arrest and detention. Hence, they strongly felt that only a written guarantee of individual rights could deter any government from acting arbitrarily. The

*Tope, T.K : *The Constitution of India* P. 125.

fundamental rights were, therefore, included with the primary object of securing the life and liberty of the people against the arbitrary acts of the government.

The members of the Constituent Assembly were anxious to safeguard the cultural, religious and other interests of the minority communities. They wished to remove their unfounded fears. Even Patel, who had the reputation of being the strongest amongst the Congress leaders, is said to have remarked : "Our mission is to satisfy every one of them (minorities). At least let us prove that we have no ambition to rule others". In the years immediately following the Partition, the minorities were nursing a feeling of helplessness against the possible arbitrary rule of the majority community. These circumstances and considerations also necessitated the insertion of written fundamental rights in the Indian Constitution.

The necessity of incorporating the fundamental rights in the Constitution of India had been recognised even long before our country achieved freedom. The Indian nationalists had frequently argued that communal problem of India could be solved (not by communal electorates) only by making provisions for a guaranteed Bill of Rights in the Indian Constitution. In the Nehru Constitution, which they framed in 1928, they had recommended an exhaustive list of fundamental rights (Thirteen out of the nineteen rights enumerated in the Nehru Report were included without any material alteration in the Chapter on Fundamental Rights). On the subsequent occasions also they continued to make a demand for the basic freedoms till the Cabinet Mission of 1946 (which was solely manned by the English) unequivocally subscribed to their view. In the face of these declarations and demands, the Assembly was left with no option but to include fundamental rights in the Constitution. Besides, the Fathers of the Constitution, while inserting Part III in the Constitution, were, in a way, seeking the fulfilment of a long-cherished aspiration.

It is also argued that the inclusion of the chapter on fundamental rights was rendered necessary for the eradication of age-old social evils, like untouchability, personal servitude and exploitation of women and children. Moreover, the Constitution-makers wished to create equality among the members of the Indian society, which had been absent in the traditional social order of our country.

To sum up, the authors of our Constitution inserted the 'Bill of Rights' not because it was the fashion of the era, but because it was needed most by free India to be in her constitutional charter. Apart from her (India's) basic needs, which favoured their (of fundamental rights) inclusion in the Constitution, the Fathers of our Constitution were also moved by the prevailing circumstances. To quote G. Austin, "In a politically underdeveloped country like India, which also lacked the required communication necessary to the formation and expression of public opinion, the written rights were nothing but a necessity."

Special features of the Indian Bill of Rights

Though enumeration and codification of the rights has been a familiar feature of the modern constitutions, yet all of them have not guaranteed the same number of rights. Their number and detailed specification vary according to the circumstances prevailing in a particular country. The Indian Bill of Rights, therefore, stands distinguished from those included in other constitutions of the world. Some of its note-worthy features may be described as under :

The Indian Bill of Rights is the *most elaborate and complex one*. There are as many as 24 articles (12—35) in it. Some of its articles are extra-ordinarily big in size. In its original form Article 19 thereof, for instance, ran into 450 words and its size was further increased by the Constitution (First Amendment) Act of 1951. The classification of Fundamental Rights into seven categories, the comprehensive and detailed treatment of each right and the elaborate set of limitations and reservations pertaining to them, have also made this chapter of an unusual size. Besides, this chapter includes some such rights as are unknown to other constitutions. The most important amongst them include the provisions relating to the untouchability (Article 17), the power of the State to make special provisions for women and children (Article 15 (3) and also for the advancement of backward classes, the Scheduled Castes and the Scheduled Tribes.

The Fundamental Rights in the Indian Constitution *are not couched in absolute terms*. They are directly restricted by the Constitution, which enumerates in each case the exceptions, limitations and qualifications. Besides, they can further be restricted or even abrogated by constitutional amendment. This is not found in the American Constitution. There fundamental rights are stated

tion. It was not the business of the Court. The function of the judges is not to amend the Constitution but to interpret it.

The opponents of the Bill look upon it as a dangerous attempt to curb or abridge or take away the fundamental rights. They hold that if the Bill on the anvil of the Parliament succeeds in conferring the right or power in question on the legislature, then there would be end of the rule of law in our country. Commenting on the Bill, Justice Hidayatullah said, "the Constitution speaks through the Court. Once the Court has said that the Parliament has no power under the Constitution to amend fundamental rights, Parliament cannot take that power with Mr. Nath Pai's Bill or any body else's bill. And, once we have a written constitution, it is the Constitution that is supreme, and all talk of the supremacy or sovereignty of the Parliament is without constitutional sanction. The judiciary, the executive and the legislature must all function within the four corners of the Constitution."

The controversy over the Nath Pai's Bill centres round a simple yet cardinal issue—*who in a democracy has the competence and power to amend the constitution?*—the people through the Parliament or a handful of learned judges in the Supreme Court.

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2. *K.P. Krishna Shetty* : Fundamental Rights and Socio-economic Justice in the Indian Constitution.
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4. *K.C. Wheare* : Modern Constitutions.
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6. *P.B. Gajindragadker* : The Constitution of India.
7. *G. Austin* : The Indian Constitution : Cornerstone of A Nation.
8. *T.K. Tope* : The Constitution of India.
9. *Rajni Kothari* : Politics in India.
10. *J.M. Shelat* : The Spirit of the Constitution.

CHAPTER 25

Directive Principles of State Policy

Our Constitution in its Part IV embodies the Directive Principles of State Policy.* They not only form a distinctive feature of the Indian Constitution but also serve as a beacon light to India on her march towards the temple of socio-economic justice.) In the words of Granville Austin, 'they set forth the humanitarian socialist precepts that are the aim of the Indian social revolution.... They also place upon the Government a major responsibility for the welfare of the mass of Indians.' (Though not enforceable by courts, the Directive Principles are, nevertheless, fundamental in the governance of our country. According to M. C. Chagla, "If all these principles were fully carried out, our country would indeed be a heaven on earth. India would then be not only a democracy in the political sense but also a Welfare State looking after the welfare of its citizens."†) Justice Kania holds that 'the Directives represent not the temporary will of a majority but the deliberate wisdom of the nation.'

Nature of the Principles

(The Directive Principles of State Policy are in the nature of instructions from the ultimate sovereign, the people of India, to the authorities set up under the Constitution. They lay

* The only other constitutions, which provide for the Directive Principles are those of Ireland and Burma.

†Chagla M.C. : *An Ambassador Speaks*. P. 34

down the guidelines for the State, defining the direction which it has to take. The Directives were included in the Indian Constitution with the belief that the State would play an ever increasing role in the social and economic life of the nation. It was also hoped that the Government would fully carry out the obligations laid upon it under the Directive Principles. Hence, every legislature, every executive and every other public body, including Village Panchayats (set up under the Constitution), are morally bound to observe these principles in discharging their duty in all circumstances. The Principles, thus, form a code of behaviour for those who are called upon to carry on the administration of the country.

(The Directives also represent the minimum of the ambitions and aspirations cherished by the people of India, set as a goal to be realised in a reasonable period of time.) They aim at making the Indian masses free in positive sense : free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves.* Viewed from this angle, the Directives form one of the most important and creative parts of the Indian Constitution. Prof. Sri Ram Sharma writes : "The Directive Principles of State Policy provide the much needed philosophy of the Constitution and place before Indian citizens the goal that the governmental policy in India is to reach". To put in simple words, the Directives are the ideals, which inspire the Governments (both at the Centre and in the States) to work for the common good of the people.

The Directive Principles embody the social and economic rights of the people, which could not be made justiciable because of practical difficulties. But the Fathers of the Constitution wanted free India to follow them. It was clearly stated by them in the Constituent Assembly that the aim of the Directive Principles is to prescribe the principles of social and economic democracy in the country. They do not form a complete blueprint, nor do they constitute a cut-and-dried and rigid programme, but they do reflect the 'Founding-Fathers' desire that every government shall strive to bring about economic democracy." Obviously, it means that the Directives contain a very compre-

*Austina, G : *The Indian Constitution : Cornerstone of A Nation* P, 51

hensive political, social and economic programme for a modern democratic state. They give a broad picture of the progressive principles on which the Constitution wants the governance of the country to be based. As a matter of fact, the fundamental rights can be truly meaningful for the masses only if the obligations laid down upon the Government under the Directive Principles are fully carried out.

The Directive Principles are non-justiciable. It means that the courts in India, including the Supreme Court, have no power to enforce them. Their non-observance does not lead to legal consequences, nor can the State be compelled through courts to implement them. Nevertheless, as provided in Article 37 of the Constitution, the Directives are fundamental in the governance of the country. The legislative and executive wings of the State are duty-bound to carry them into effect. Hence, the Directive Principles, though unenforceable provisions, are not inferior or subordinate to any other part of the Constitution. Rather, they are an integral part of the Constitution.) Besides, their incorporation in the Constitution vests them with a particular solemn sanction and status and gives them the character of a 'pledge' that the policies of the State would be consistently directed towards the attainment of the objective of the Welfare State. While speaking on this subject in the Constituent Assembly, Dr. Ambedkar observed : "The Directive Principles is merely another name of the Instruments of Instruction issued under the Government of India Act, 1935 to the Governor-General and the Provincial Governors. The only difference is that the Instruments of Instructions were meant only for the executive branch of the Government, but the Directive Principles are addressed to the State as such. They are, therefore, instructions both to the executive and legislature."

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

The Directive Principles of State Policy are enumerated in Arts. 36-51 of the Constitution. They cover a wide range of state activity embracing social, economic, educational, legal and international problems.* They are, however, neither properly classified nor logically arranged. Some writers have, of course,

*The Directive Principles of State Policy, as embodied in our Constitution, are much wider in scope than those incorporated in Irish and Burmese constitutions.

divided them into three mains categorie : Socialistic, Gandhian and General.

Socialistic Principles

The principles grouped in this category, in the main, relate to social security. They direct the State to secure : (1) adequate means of livelihood for all citizens, (2) fair distribution of wealth, (3) equal pay for equal work for both men and women, (4) protection of child and adult labour (Art. 39), (5) employment, (6) public assistance in the event of unemployment, old age, sickness etc. (Art 41), (7) just and human conditions of work and for maternity relief. In view of the fact that every modern progressive state provides for these conditions for its people, these principles do not constitute a very tall order on the State.

Gandhian Principles

In this category are included those principles which seek to reorganise the new order in accordance with certain conceptions of Gandhian ideology. They, therefore, have Gandhian mark on them. They direct the State to take steps : (1) to organise village panchayats as units of self-government (Art 40), (b) to promote with special care the educational and economic interests of the weaker sections of the people, especially the Scheduled Castes and Tribes (Art 46), (c) to promote cottage industries on an individual and co-operative basis in rural area (Art. 43), (d) to preserve and improve the breeds and prohibit the slaughter of cows, calves and other milch and draught cattle (Art. 48),* (e) to bring about prohibition of intoxicating drinks and drugs.† (f) to bring about the separation of the judiciary from the executive (Art. 50).

General Principles

The principles enumerated in this category expect the State (1) to secure a uniform civil code applicable to the entire country (Art.44), (2) to provide within ten years from the commencement of the Constitution free and compulsory education to all children up to the age of fourteen (Art. 45), (3) to organise agriculture

*Some members of the Constituent Assembly demanded that cow-slaughter should be completely banned. Religious feeling of the Hindus favoured such a demand, because Hindus regard the cow as a sacred animal. The Constituent Assembly, however, turned down this demand.

†A demand was made for total prohibition of intoxicating drinks by Some members of the Constituent Assembly. It was pointed out that such measures could be introduced gradually and not at a stroke. Hence, this modified form was accepted.

and animal husbandry on modern and scientific lines (Art. 48), (4) to raise the standard of nutrition as also of health (Art. 47). Article 51 of the Constitution enjoins that, consistent with India's desire for world peace, the State shall endeavour (a) to promote international peace and security ; (b) to maintain just and honourable relations between nations ; (c) to foster respect for international law and treaty obligations ; and (d) to encourage settlement of international disputes by arbitration.

CRITICISM OF THE DIRECTIVE PRINCIPLES

(The Directive Principles of State Policy were subjected to ■ severe criticism in the Constituent Assembly. Prof. K.T. Shah described them as a cheque payable by the bank concerned at its convenience. Mr. Nassir-ud-Din held that the Principles were no better than 'the new year resolutions which are broken on the second of January'.) The Directives have also been assailed by many ■ constitutional critic. They have dubbed them as 'high sounding sentiments', 'pious wishes' or 'decorative platitudes'. Dr. K. C. Wheare writes : "The Directives are in the nature of a manifesto of aims and aspirations. It is wise to exclude them from the confines of the Constitution, for, they are not intended to be regarded as a rule of law."

(The critics, in the main, contend that the promises held forth by the Directives are vague and uncertain ; that they are not categorical on such vital issues as labour-management relations, planning etc., ; that some of them are mere foreign borrowings and adaptations of principles of recent western political or social philosophy ;) that they are a set of platitudes designed by clever politicians to hoodwink the credulous Indian masses ; that the solemn dignity of a Directive Principles, which has been extended to the need of preserving, protecting and maintaining the places of national and historical interest, is hardly desirable. It is also asserted that the Directives are sops to critics, who demanded that economic rights, such as the right to work, ought to be made justiciable and should also be included in the chapter of Fundamental Rights. (But the oft-repeated criticism of the Directives is that they impose no obligation on the State to enforce them. Hence, they tend to remain ■ dead letter, unless legislatures take effective action for the transformation of the social and economic structure of the community in accordance with them. Prof. N. Srinivasan writes : "The

formulation of the Directives of State Policy can hardly be considered inspiring. It is both vague and repetitive. The Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old, and provisions suggested by reason and science with provisions based purely on sentiment and prejudice.”*

Their value and justification

With all the criticism that is levelled against this chapter of the Constitution, the Directive Principles are not without value and effect. They contain positive obligations of the State towards its citizens, and have much useful to commend in the interests of the Indians. According to T. K. Tope, “If the people and their representatives in the legislatures act as watch-dogs on the actions of the executive, they will prove to be an effective source of social, political and economic reform.” Hence, it is unfair to observe that the inclusion of the Directive Principles of State Policy in the Indian Constitution has little or no value for the Indian citizens.

(*The Principles serve as a code of conduct for the Indian administrators and legislators in the discharge of their responsibilities. They cast an obligation on every party that is called upon to run the Government to strive to bring about the reforms proposed by them. To put in other words, the Directives ensure that Indian Governments, whether controlled by the Radicals or the Conservatives, must strive to formulate their policies in such a way as to approximate to the ideals enshrined in them.*) Obviously, it means that the Directives will have the effect of prompting the Conservatives and restraining the Radicals. To quote Amar Nandi, “The Directive Principles in the Constitution ensure that a conservative party will not be able to ignore these principles altogether in the formulation of its policy and also that a radical party will not feel it necessary to abrogate or scrap this Constitution in order to be able to carry out the party’s economic or other programme. Thus, the Directives provide an insurance against extreme from Right and Left.”

Even if they are to be looked upon as mere moral precepts, the Directive Principles are of immense value. Mr. B. N.

**Democratic Government in India* P, ; 82

Rau stated in the Constituent Assembly : "Many modern constitutions do contain moral precepts of this kind.....they have an educative value." History abounds in examples to show that the lives of the countless millions have been shaped and directed by moral precepts and they have no less influenced the course of history and of nations. With no legal sanction behind them, the great documents like Magna Carta, the French Declaration of Rights of Man and the Preamble to the American Constitution have left a deep mark on the history of the countries concerned as well as on the world at large. It may, therefore, be reasonably hoped that the Principles of Directive Policy will guide and shape the policy of the Government of India, and influence the decisions of judiciary while interpreting the Constitution. Hence, to dismiss the Directives as ineffectual moral precepts or a superfluous part of the Constitution, will not be wise and fair.

Though not enforceable by courts of the country, the Directives have the authority of public opinion behind them, which is a 'bigger and more powerful tribunal'. No government responsible to the people can, therefore, afford light-heartedly to ignore them. Their flagrant violation by a Government is sure to provoke a strong opposition in the country. Within the legislature, the Government will have to face the attacks of the Opposition : outside the legislature it will certainly have to answer for their breach before the electorates on the election day. Thus, the powerful extra-legal sanction behind the Directives will keep the party in power enthusiastic about the implementation of the Directives. To quote M. V. Pylee, "The Directives constitute a kind of basic standard of national conscience and those, who violate its dictates, do so at the risk of being ousted from the positions of responsibility to which they have been chosen."

It is also held that the Directives are like constitutional conventions and are of great use in the practical working of the Constitution. Besides, they are fundamental in the governance of the country, which means that all the agencies responsible for governing the country will be guided by them. Since judiciary is one of the most important organs of the government, it is hoped that courts in India will also attach due importance to the Directives for the purpose of interpretation of the Constitution. In this context Prof. Alexandrowics observed that in so far as the

Directive Principles reflect the social and economic policy of the Constituent Assembly and embody the intentions of the Constitution-makers, the courts should give the greatest possible weight to the Directive Principles for purpose of the interpretation of the provisions relating to fundamental rights. It is, however, encouraging that the judges have actually taken recourse to the Directive Principles in deciding a number of cases relating to fundamental rights. In *State of Bombay vs F.M. Balasara*, the Supreme Court took into consideration Article 47 of the chapter, while Article 38 was referred to by the Supreme Court in its decision regarding the *State of Bihar vs Kameshwar Singh*. Again, in upholding the constitutional validity of the Minimum Wages Act (1947), the Supreme Court took into consideration Article 43, and declared in its judgement that (*In Bijay Cotton Mills vs the State of Ajmer*) the fixation of minimum wages for labourers was not a violation of freedom of trade under Article 19.

The Directive Principles stand the greatest guarantee for a genuine democracy in India. The political democracy cannot exist for long without the simultaneous existence of economic democracy. When there is no economic democracy, political democracy is bound to degenerate into dictatorship. The Directive Principles ensure the eventual emergence of an economic democracy and thereby provide the most effective sustaining force for the political democracy in India) This is, obviously, a very useful purpose which the Directive Principles are expected to serve.

The Directive Principles are also significant in so far as they lay the foundation of a Socialist Welfare State. They seek to build a socio-economic order in which concentration of wealth is prevented, full employment achieved, every one is assured the basic conditions of good life, the social services are liberally provided and adequate protection is given against involuntary unemployment, destitution and physical handicaps and disabilities. Justice M.C. Chagla writes, "If all these Principles were fully carried out, our country would indeed be a heaven on earth. India would then be not only a democracy in the political sense, but also a Welfare State looking after the welfare of its citizens—a State in which there will be economic equality between its different citizens and in which every one would have the same opportunity to educate oneself, to work and to reap the reward of one's labour."

Much to their credit, *the Directive Principles provide the people with the criteria for assessing the success or failure of the government.* A party in power has to explain to the voters their achievements in terms of the Directives, while the party desirous of capturing the power also feels called upon to show its readiness and zeal to implement them. Obviously, the Directives enable the people to judge the respective worth of the parties and lend their support accordingly. They also provide a dependable yard-stick to measure the success of a government.

It would be unfair to characterise the Directive Principles as mere borrowings from abroad. A number of these principles are entirely Indian. For instance, provisions dealing with village panchayats, cottage industries, prohibition, protection against cow-slaughter, Scheduled Tribes, Scheduled Castes, backward classes etc., have absolutely nothing foreign about them. Justice J. M. Shelat writes : "The Directive Principles are in a large measure indigenous both in birth and outlook. For, the domestic conditions, both social and economic, the necessity of a well-balanced and self-sustaining rural economy, the anxiety against monopoly of power, either political or economic, the historic grievance against the dependence of the judiciary on the executive, all these were instrumental in the formulation of these Directives."

The inclusion of the Directives in the Constitution of India is not without precedent. Many other countries of the world, including Ireland, Australia, France, Spain, etc. have also made formal declarations of some principles a part and parcel of their constitutions. Not only that, even the international agreements, like the Atlantic Charter, emphasize the ideals, which should guide the State in its activities. As a matter of fact, in this era of 'positive states' there is general tendency to enumerate in the constitution, not only the classical freedoms but also the basic principles of social and economic policy, and then to separate the two by making the former enforceable by the courts and the latter non-enforceable. The Indian Constitution has followed this practice.

To sum up, the Directive Principles are essential articles of faith for our country. They contain some significant obligations of the State towards its citizens. They are fundamental in the governance of the country and serve an educative purpose. Besides, the Directives stand as the 'greatest guarantee for genuine democracy'. According to M.C. Setalvad, "The Directive

Principles are but an amplification of the Preamble of the Indian Constitution, which bases the authority of the Constitution of India on the solemn resolve of the people of India to secure to all its citizens Justice in the social, economic and political fields ; Liberty in all spheres ; Equality of status and opportunity ; and promotion among them all of Fraternity assuring the dignity of the individual and unity of the Nation."

IMPLEMENTATION OF THE PRINCIPLES

Critics' view-point

The Congress Government has often been criticised for its failure to take adequate measures in respect of implementing the Directive Principles. Shri Tusher Chatterjee observed in the *Lok Sabha*, "that common people did not feel any difference between the state of affairs that existed during the British days and the conditions that prevail to-day. Several problems like those of food, education and health still remain unsolved, while the life of the common people has become more burdensome and difficult. They cannot but feel that these solemn declarations in the Constitution are not directives but only 'decoratives' in the Constitution". In his last-published work, 'The Foundations of New India', Dr. K.M. Panikkar regretted that even the Gandhian Principles had not been faithfully implemented by the Government of India. He writes, "Though Congressmen as a body claim to be teetotalers, prohibition as a national policy is not even being talked about. With some difficulty the States in which prohibition was introduced in the first enthusiasm are carrying on with it even now. There is, however, no talk now of enforcing it on an all-India scale."*

The critics now do not feel convinced with the plea that the lack of finance did not allow the Government to accomplish much in respect of these Principles. For, they find before them the example of Russia, which announced the full social security and social insurance scheme within less than two months after the great October Revolution. Again, the Soviet Government undertook the maintenance of all invalids, orphans and unemployed in the very first year after it came to power. It is further argued to the discredit of the Congress Government

*Panikkar, K.M.: *The Foundations of New India*. P. 183

that the recovery of Russia after the violent Revolution was not better than that of India after the peaceful transfer of power in 1947.

Achievements in the field

There is, no doubt, much truth in the above contentions. But, at the same time, it would be unfair to observe that our national government has been annoyingly inactive in implementing the Directive Principles. During the last twenty years, the Directive Principles have been a guide-line for the Union Parliament and State Legislatures ; they have been cited by the courts to support decisions ; governmental bodies, like Government of India Fiscal Commission, have been guided by their provisions. The Principles have been the source and inspiration of reform legislation. For, under their aegis, the Indian Parliament has been active in matter of social legislation, whether it be called by the Hindu Code or by any other name.

There is no denying the fact that the Directives have provided a great impetus towards changing and rebuilding society for the common good. Most of the States have passed laws designed to prohibit the slaughter of the cows, calves and other milch and draught cattle. The community development programme has been in operation in many parts of the country. Minimum wages have been fixed in a number of spheres of employment. Equal wages for equal work are being paid to both men and women in almost every area of activity. A number of laws have been passed with a view to protecting the children and the youth against exploitation. A limited scheme of workmen's insurance against sickness, accident and disease is also in operation. Steps are being taken to provide for a scheme of unemployment insurance. Great emphasis is being laid on the creation of employment opportunities. In most of the villages, Panchayats have been set up to serve as primary units of administration.

The policy of prohibition has also been given due consideration. At least half a dozen States, including Bombay and Madras, have enforced total prohibition. The remaining States are also not slow in taking necessary steps in this direction. The principle of securing the separation of judiciary from the executive is also being implemented. The States of Assam, Bombay, Punjab, Madras and Kerala have brought about

this separation. Andhra has also implemented this Directive except in three districts of East Godavari, Krishna and Guntur. A beginning has been made even in Orissa, while West Bengal Government has appointed a Committee to work out the financial implications of the separation of judiciary from the executive. It is hardly necessary to detail the efforts of the Government to promote the educational and economic interests of the weaker sections of the people, particularly, the Scheduled Castes and Tribes. The growth of cottage and small-scale industries is being encouraged. Though the passing of a uniform civil code for all the citizens of India is not an easy affair, yet a step has been taken even in this direction. The Parliament has codified law relating to Hindus in respect of Marriage, Divorce, Succession, Minority and Guardianship Maintenance and Adoption.*

It is also encouraging that there has been a substantial increase in the vesting of both ownership and control of national resources of the community in the State. The great multi-purpose river-valley projects, such as Bhakra-Nangal, Damodar Valley and Hirakund; iron and steel producing concerns, such as Bhilai, Rourkela and Durgapur; ship-building centres like Vizagapatam and other enterprises such as the Sindri Fertilizers, Hindustan Machine Tools, Chittranjan Locomotives, Hindustan Aircraft, are all owned and managed by the State. The contribution of India towards the promotion of international understanding, peace and security is quite commendable. It is recognised even by most of the nations of the world. A few years ago Sri B. N. Datar observed in the *Lok Sabha*, "the policy of Government has been shaped according to these principles...Every decision of the Planning Commission has been guided and coloured by the Directive Principles."† The nationalisation of banks, the ceiling on property and the taxation policy of the Government are all directed towards the realisation of the Directives.

Even if the Government has not been able to achieve some of the objectives, it would be unfair to criticise it ruthlessly. The task, which the Directive Principles place before the State, is really stupendous. The problems of achieving full employment, free

*The Hindu Marriage Act (Act 25 of 1955); (ii) The Hindu Succession Act (Act 39 of 1956), (iii) The Hindu Minority and Guardianship Act (Act 32 of 1956); (iv) The Hindu Adoption and Maintenance Act (Act 78 of 1956)

†*The Tribune*, September 1, 1958.

and compulsory education for children, equitable distribution of national wealth are colossal ones. No Government, whatever its party complexion, can solve them so quickly. India will take yet several decades to achieve the goal set in the Directive Principles and to create a Welfare State in the real sense of the term. It is, however, desirable that the Government should periodically provide opportunity to the people and their representatives to evaluate its achievements in this direction. This will have a wholesome effect on the political atmosphere of the country and will also take us towards rapid progress and prosperity.

The prevailing circumstances in the country demand that the Government should pay serious attention to the problem of social security. It will become explosive, if no action is taken now. *As the stakes are very high, a vigorous, planned and concerted action must be taken at the earliest opportunity.*

FUNDAMENTAL RIGHTS AND PRINCIPLES

The Fundamental Rights in the Indian Constitution are in the nature of injunctions requiring the State not to do certain things. They are, thus, prohibitive in character and lay down the negative obligations of the State. To put in other words, they prohibit the State from interfering with the citizens' lawful enjoyment of such activities as include freedom of speech and expression, movement, settlement, assembly, worship etc. etc. No official can arbitrarily debar them from their enjoyment. If he does so, he renders himself reproachable and answerable.

*The Directive Principles, on the other hand, are affirmative directions dealing with the positive obligations of the State towards its citizens. They declare that the duty of the State is to promote certain social and economic objectives. To quote Alen Glendhill "Fundamental Rights are injunctions to prohibit the Government from doing certain things ; the Directive Principles are affirmative instructions to the Government to do certain things".**

The Fundamental Rights are justiciable, while the Directive Principle are non-justiciable. The violation of a fundamental right entitles a citizen to move the Supreme Court or a High Court for the protection of his right, but the non-observance of the Directives by the State gives no such right to the citizens. To put in other words, a citizen can seek redress in a court of law in

*Glendhill, Alen : *Fundamental Rights in India*. P. 121.

case the State infringes any of his fundamental rights ; he cannot sue the State, if it does not follow the Directive Principles. Obviously, it means that the infringement of fundamental rights leads to legal consequences but no such consequence follows in case of unenforceability of the provisions dealing with the Directive Principles. The non-observance of the Directive Principles can, of course, turn the public opinion against the Government forcing it to quit its office.

Art. 37 of Part IV asserts the fundamental nature of the Directive Principles, but no article in Part III lays emphasis on the fundamental nature of the provisions contained therein. Hence, if the enforceability of the provisions of Part III and unenforceability of Part IV, accords a position of subordination to the latter vis-a-vis the former, then the fundamental nature of the provisions of Part IV and the inexplicable silence in Part III about the fundamental nature of its provisions gives superior position to Part IV vis-a-vis Part III of the Constitution. Obviously, it means that the positive assertion of the fundamental nature of the directive principles retrieves completely the position they are supposed to have lost by being unenforceable provisions. It would not be out of place to mention here that the Directive Principles have been made unenforceable not to render them ineffective, but only to forestall any attempt by citizens to compel the State to implement them immediately or at a time, when it is not financially and administratively ready for it.

Judicial attitude and Theory of Subordination

The judiciary in some of its earlier decisions laid emphasis on the fact that unenforceable Directive Principles were inferior to enforceable Fundamental Rights. The Directives should, therefore, conform to and run subsidiary to the chapter on Fundamental Rights. In *Quareshi Vs the State of Bihar*, the Supreme Court held : "the State should certainly implement the Directive Principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for, otherwise, the protecting provisions of chapter III will be merely a rope of sand." Thus, the judiciary accorded the Directives a position subordinate to the Fundamental Rights, for, it permitted the implementation of the Directive Principles without offending or restricting, in any way, the Fundamental Rights.

The progressive sections of the society did not appreciate this attitude of the judiciary. They held the view that the theory

of subordination was based on the assumption that unenforceable Directive Principles were inferior to enforceable Fundamental Rights. And this assumption was neither justified by the actual provisions of Part III and Part IV of the Constitution nor was it in conformity with the intentions of the constitution-makers. They vigorously pleaded that social interests should not be subordinated to the individual interests. The progress and welfare of the society should not be hampered by the rights of the individual. Hence, in the implementation of the Directive Principles, nothing should be allowed to stand in their way, not even the Fundamental Rights guaranteed under the Constitution.

The judicial decisions in *Kameshwar Singh and Bijay Cotton Mills cases* reveal that the judiciary has of late adopted a pragmatic and sociological approach to the problem. *Kameshwar Singh* decision or *Kameshwar Singh doctrine* has laid down two rules of construction :—

(i) that whenever there is a conflict between the right of an individual and a legislation purporting to implement socio-economic policies laid down in Part IV of the Constitution, greater weight should be given to the latter.

(ii) that every socio-economic legislation made in pursuance of the Directive Principles must, of necessity, be construed as one designed for 'public purpose', or as one intended to promote the 'public interest', or as a 'reasonable restriction' on the Fundamental Rights.

More or less a similar principle was laid down by Justice Mudholkar in *Sajjan Singh case* wherein he recommended the applying of the *doctrine of harmonious construction* to resolve the conflict between Fundamental Rights and Directive Principles by reading the former in the light of the latter.

As a matter of fact, the Fundamental Rights and Directive Principles form one integrated whole. There is no real conflict between the two. They are intimately related to and inseparably bound up with each other. Justice K. Subba Rao has (in the *Golak Nath case*) propounded the *theory of elastic fundamental rights* according to which the Fundamental Rights are considered flexible enough to respond to the changing needs of the society and to adjust themselves to the changing environments in the new social order. This theory is not only in consonance with the provision

of Art. 37 of the Constitution but is also in conformity with the intentions of the Founding Fathers of the Constitution.

FURTHER READING

1. *G. Austan* : The Indian Constitution : Cornerstone of a Nation.
2. *K P. Krishana Shetty* : Fundamental Rights and Socio-economic Justice in the Indian Constitution.
3. *K. M. Panikkar* : The Foundations of New India.
4. *Alan Gledhill* : Fundamental Rights in India.
5. *N. Srinivasan* : Democratic Government in India.
6. *K. Subba Rao* : Conflicts in Indian Polity.

CHAPTER 26

The Government of the Union

(THE UNION EXECUTIVE)

THE PRESIDENT AND VICE-PRESIDENT

The Indian Constitution vests the executive authority of the Union in the President and provides for a Council of Ministers to aid and advise him in the exercise of his powers. The Union Executive, thus, consists of the President and the Council of Ministers, the former being the formal and the latter real executive.

SECTION I

THE PRESIDENT

The executive head of the Indian Union is known as President.) He is designated as such because India has accepted the republican form of government, and the head of the republic could not be called a King.*) Our Constitution-makers, no doubt, borrowed the designation of the President from the American Constitution, yet they did not provide for a presidential form of government. While introducing the Draft Constitution in the Assembly, Dr. Ambedkar observed, "... the President occupies the same position as the King under the English Constitution. He is the head of the

*Pt. Jawaharlal Nehru, the Prime Minister of India, said, "India is bound to be a Republic...we cannot produce monarchy in India out of nothing. It is not there." *Independence and After* Pp 348-49.

may entrust this task.* During the process of investigation, the President may defend himself, if necessary, through his counsel. He is also entitled to appear in person. (There is no provision for suspension of the President under impeachment. He continues to hold his office during the period of investigation). If, as a result of such investigation, the House comes to the conclusion that the charge is sustained and it passes a resolution by two-thirds majority to that effect, the President is removed from his office without any delay.

ELECTION OF THE PRESIDENT

Mode of Election

(The President of India is an elected head of the State. He is elected by an electoral college consisting of : (a) the elected members of both Houses of Parliament, and (b) the elected members of the Legislative Assemblies of the States.† As is obvious from this mode of election, the citizens of India play no direct part in the election of the President. He is elected indirectly by their representatives in the legislatures.)

Some members of the Constituent Assembly objected to the indirect election of the President. They favoured his direct election by the people on the plea that such a system would be more democratic, and that it would make the President a direct choice of the nation. Despite these arguments in favour of his direct election, the Constituent Assembly decided against it, and precisely for three reasons: First, the direct election of the President would be a costly and cumbersome procedure, involving the exercise of vote by a vast electorate of over 300 million people. Secondly, there seemed no sense in electing the Chief Executive by a direct vote, when he was to be only a constitutional head. Thirdly, it was feared that a directly elected President, conscious of the backing of the masses, might not be content to play the role of a constitutional head. Pandit Jawaharlal Nehru and Dr. Ambedker held also the view that the election of the President by such an

*To ensure a fair and judicial investigation, it is always desirable that the Supreme Court of India or a body consisting of the retired judges of the Supreme Court be entrusted with such a responsible task.

†The system of election adopted for Indian President is a novel one. It is entirely different from those adopted for the election of the President in America, Ireland, French Republic etc.

electoral college, which included the elected members of both the Parliament and the Legislative Assemblies, was tantamount to direct election on adult franchise. It also made the President a choice of the nation, not of a particular party or constituency.)

Procedure for Election

[The makers of the Constitution wanted to secure so far as possible uniformity in the scale of representation of the different States at the election of the President. They also wished to secure parity between the States as a whole and the Union.* The principle of one vote by one person could not achieve this object, for : (a) the States in the Indian Union are unequal in population, (b) the strength of the members in their Legislative Assemblies is not uniform ; (c) the total strength of the elected members of the State Legislative Assemblies is far greater than that of the elected members of both the Houses of Parliament. Hence, the system of weighing the number of votes to be cast by each member was devised by the Constitution-makers.

✓ (A) According to the procedure laid down in Art. 55 of the Constitution each member of the electoral college, who represents a State Legislative Assembly, is entitled to the number of votes calculated as under :—

$$\left. \begin{array}{l} \text{Total population of the State} \\ \text{Total number of the elected} \\ \text{members in the Legislative Assembly} \end{array} \right\} \text{ Divided by 1,000}$$

Fraction exceeding one-half being counted as one.

The Drafting Committee, thus, explained the method of calculation :

“The population of Bombay is 20, 849, 840. Let us take the total number of elected members in the Legislative Assembly for Bombay to be 208 (*i.e.* one member representing one lakh of the

*It has been pointed out by some critics that the procedure of Presidential election has given unusual prominence to the States, for the Council of States which has been given about one-sixth of the total Presidential votes, is also an exact mirror of the State Assemblies, being elected by them through the method of proportional representation by means of single transferable vote. In the name of equity, a practical king-making role has been vested in the major and more populated States. On account of the gradual development of multi-party system, it is inferred that a party commanding majority in Madras, Uttar Pradesh, Bihar and Bombay will get the Presidency.

population). To obtain the number of votes which each elected member will be entitled to cast at the election of the President, we have first to divide 20, 849, 840 (which is the population) by 208 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case the quotient is 100,239. The number of votes which each such member will be entitled to cast would be $100,239 \div 1000$ i.e., 100 (disregarding the remainder 239 which is less than five hundred).

(B) The number of votes, to which an elected member of either House of Parliament is entitled, is calculated as under :

$$\frac{\text{Total number of votes assigned to the elected members of the State Legislative Assemblies}}{\text{Total number of elected members of both Houses of Parliament}}$$

Fraction exceeding one-half being counted as one.

This formula was thus explained by the Drafting Committee : "It the total number of votes assigned to the members of the Legislatures of the States in accordance with the above calculation be 74, 940 and the total number of elected members of both the Houses of Parliament be 750, then to obtain the number of votes, which each member of either House of Parliament will be entitled to cast at the election of the President, we should have to divide 74, 940 by 750. Thus, the number of votes, which each member will be entitled to cast in this case, would be $\frac{74,940}{750} = 99 \frac{23}{25}$ i.e. 100 (the fraction $\frac{23}{25}$, which exceeds one-half being, counted as one)."

For the Presidential election, the population of a State is taken to be the population at the last preceding census.

Method of Voting (Proportional Representation)

In the presidential election, each member of the electoral college casts his votes (which run into hundreds) through the procedure of proportional representation by means of single transferable vote. The candidate securing an absolute majority through transfer of votes is declared elected. The voting is by

secret ballot. The members of the Parliament cast their votes at Delhi or at the capitals of the States. The members of the State Legislative Assemblies cast their votes in the capitals of their home States.

Our Constitution-makers preferred the Proportional Representation system to the straight voting system, for it was considered to be politically more suitable. In the ordinary straight voting system, a candidate who secures the highest number of votes, is declared elected. But under the Proportional Representation system any member who secures the necessary quota of votes is declared elected. The quota is determined by the following formula :

$$\text{Quota} = \frac{\text{Total number of votes polled}}{\text{Number of candidates} + 1} + 1$$

A voter has to mark his preference by putting 1, 2, 3 and so on against the candidates according to his first, second or third preference. At the first count, if it is found that a candidate has obtained votes more than or equal to the quota, he is declared elected. If, at the first count, no candidate gets the quota, the candidate obtaining the least number of votes is eliminated, and his votes are distributed among other candidates. The process of counting, if necessary, is repeated till at last such a candidate is found, who has obtained the required quota of votes. The candidate finally surviving the process of elimination is then returned as President.*

Conduct of Election

The superintendence, direction and control of the conduct of election of the President is vested in the Election Commission. This Commission issues a notification and fixes dates for nomination, scrutiny of nomination and withdrawal of candidature. It also fixes places and time of polling for the presidential election. The Chief Election Commissioner counts the votes cast and declares the result. Any doubt or dispute arising out of an election of President is enquired into and finally decided by

*In the first three elections of the President, the Congress nominees always won in the first count and by a wide margin. Dr. Zakir Hussain, though won in the first count, yet the margin of his victory was not as wide as it was in the preceding elections. V.V. Giri's election was decided in the second count. It made the people realize the significance of the system of proportional representation by means of single transferable vote.

State but not of the executive. He represents the nation but does not rule the nation." His view was supported by some other members of the Constituent Assembly including Krishnaswami Ayyer, B.N. Rau and Pt. Jawaharlal Nehru. But a careful reading of the Constitution gives the impression that 'the office of the Indian President is a unique institution. His status and functions are neither like those of the British monarch nor of the American President.' For, after having provided for a quasi-federal structure, the fathers of the Constitution were anxious to ensure that the Head of the State was not an ornamental figure nor, at the same time, was he made as powerful as the American President. Dr. K. M. Munshi, who played a prominent part in the framing of the Constitution, thus, writes on this subject: "The provisions were the outcome of a definite decision that the President should not be the creature of the Parliament nor the nominee of the party in power at the centre, nor a figure-head as the president of the French Constitution of 1875, but an independent organ of the State representing the whole Union and exercising independent powers."* Within the express provisions of the Constitution, his office is, indeed, one of potential authority, dignity and national importance. If the holder of this office is a man of great personality, endowed with considerable capacity for obtaining the extraordinary grasp of great questions, he can play a significant role in the affairs of the Government.)

Qualifications for the President

[For being elected as President of the Indian Union, a person must be a citizen of India. He must be of at least 35 years of age and qualified for election as a member of the House of the People. Besides, he must not at the time of election hold any office of profit under the Government of India or under any State Government or local authority.* The offices of the President, Vice-President, Governors and Ministers of the Central and State Governments are, however, not deemed to be offices of profit. Persons holding any of them may seek election as President of the Union. As provided in Art. 59 of the Constitution, the President cannot at the same time be a member of the

*Munshi, K. M. : *The President under the Indian Constitution* P. 25.

*The President is prohibited from holding any office of profit because such prohibition is necessary to maintain the dignity of the office and impartiality of the person concerned.

Parliament or a State Legislature. Hence, if a member either of Parliament or a State Legislature is elected as President, he must vacate his seat before he assumes the office of the President.]

Salary and emoluments

The President of India draws a monthly salary of Rs. 10,000, in addition to such emoluments and allowances as are determined by law by Parliament. He is also entitled to a free furnished official residence known as the *Rashtrapati Bhavan*. His salary and allowances cannot be reduced during his term of office. He can, however, voluntarily surrender a part of his salary (Dr. Rajendra Prasad and Dr. Radhakrishnan drew Rs. 2,800 and Rs. 2,500 respectively as their salary). As provided by the President Pension Act, a person who ceases to hold office as President, either by expiration of his term of office or by resignation, is entitled to an annual pension of Rs. 15,000 for the remainder of his life. He also gets office establishment charges upto Rs. 12,000 per annum and free medical attendance and treatment.

Term of Office

The President is elected for a period of five years and is eligible for re-election. He may, of course, resign his office before the expiry of his term. Such a resignation is to be addressed to the Vice-President, who is required forthwith to communicate it to the Speaker of the *Lok Sabha*. No cogent and convincing reason has, however, been advanced for communicating the new of resignation to the Speaker of the *Lok Sabha*.

Removal of President (Impeachment)

[The President may also be removed from his office for violation of the Constitution by a process of impeachment.* The charge of impeachment can be preferred by either House of the Parliament by a resolution (of which 14 days' notice has been given by not less than one-fourth of the total membership of a House) passed by a majority of not less than two-thirds of the total membership of that House. The charge is then investigated by the other House or by a Court or Tribunal to which that House

*The only impeachable offence for the President of India is 'violation of the Constitution'. There are more grounds for the impeachment of the American President like treason, bribery or other high crimes and misdemeanour.

As provided in the Indian Constitution, our President can perform several political functions in his own right without consulting the Ministers. The important among these are : (1) authorising a political leader to form a Ministry ; (2) summoning of each House of Parliament ; (3) dissolving the House of People entailing a general election ; (4) assenting to a bill passed by the Legislature ; (5) summoning of a conference of leaders to consider ways of handling a constitutional crisis, etc. etc. It is true that the President does not attend the cabinet meetings nor does he preside over them, yet he sees all Cabinet papers, circulated both by the Cabinet office and the various departments. The Prime Minister meets him every week and other Ministers once a month for an hour. They keep him informed of the important developments in their respective departments. He receives the Cabinet agenda in advance and can discuss memoranda with the Ministers responsible for them. He also receives a copy of the Cabinet minutes and the daily point of despatches circulated by the foreign office.

The President, under Art. 78 of the Constitution, can demand that any matter upon which a Minister has taken a decision by himself be considered by the Council of Ministers as a whole. Moreover, nothing can be done without his signature which he can delay in order to give his advice to the Council of Ministers. And there is every chance of his advice being followed. A reference to the role of Dr. Rajendra Prasad and Dr. Radhakrishnan will not be out of place here. In spite of Pandit Nehru's hypnotic hold over the Indian masses, Dr. Prasad continued to play a great role in the affairs of the government. His method, however, was not of dictating any course of action to his Ministers but was of helping them with his knowledge, experience and disinterested judgement on matters affecting the welfare of the Indian people. Dr. Prasad spoke freely at the time of his interviews with the Ministers. On many occasions he induced a rethinking by them. On matters of vital importance he even used to commit his views to paper and write to the Prime Minister about his own reaction. He is understood to have written to the Prime Minister a detailed note with regard to the steps necessitated for the national integration. Dr. Radhakrishnan, who succeeded Dr. Prasad in 1962, also at times voiced the desires and aspirations of the Indian people. It was at his desire that the Prime Minister appointed Justice S. R. Das to investigate the charges levelled

against Punjab Chief Minister S. Pratap Singh Kairon. Thus we see that the President under the Constitution has a very important and useful function to perform, depending upon his personality, ability and equation with the Prime Minister.

Symbol of Nation and National Unity

The President is not only the highest dignitary of the State but he is also the symbol of nation and national unity. If he stands above the partisan politics, he can serve as a strong and abiding link of unity for the Indian people. The President also provides a rallying point for national patriotism. Besides, he maintains the governmental continuity. For, he is the sole repository of all executive power during the interval between the resignation of one government and the formation of a new one.

Fountain of Honour

The President is also the fountain of honour. It is he who makes the highest awards like *Bharat Ratna*, *Padam Vibhushan*, *Padam Sri* etc. for exceptional achievements in the fields of art, science, literature etc. It is true that the awards are given on the recommendation of the Prime Minister, yet this does not restrict the discretion of the President. *Rashtrapati* may, on his own, confer any of these honours on any person whom he might consider worthy of it.

Role as a Social Figure

The President is not only a constituent of the political set-up, but he is also an important part of the social structure. He plays a leading role in the social life of the nation. His presence at ceremonies and important social functions is of particular significance because it brings people of all political and social shades together. It would not be out of place to mention here that these dignified functions of the President are not less important than his governmental functions.

Role as Mediator

The President is a link between the Executive and the Legislature. To promote harmony and understanding between these two organs, he uses his good offices in time of need. He offers his services also as a mediator between the political party-leaders. His role in this capacity assumes much greater import-

ance, when he irons out the differences between two contending parties to a vast ■ national crisis.

Role in the International Field

The President represents our country abroad. His visits to the foreign countries strengthen our relations, both cultural and political, with them. He receives the credentials of foreign ambassadors and ministers. The greetings of their countries are accepted by him. A convention has developed to invite the members of the diplomatic corps to lunch on national festivals like 'Repulic Day' and 'Independence Day.' This gives the President a good opportunity to emphasise the need of friendly relations between countries or nations of the world.

SECTION II

THE VICE-PRESIDENT

Our Constitution provides for a Vice-President of India, but it does not vest him with great authority. He is the *ex-officio* chairman of the *Rajya Sabha*, but his role in the Government is quite insignificant. His office is, of course, of great prestige and dignity. He occupies the second position in the present Warrent of Precedence, the first and third being those of the President and the Prime Minister.

Election of the Vice-President

The Vice-President of India is elected by the members of both the Houses of Parliament in a joint sitting in accordance with the system of proportional representation by means of single transferable vote. The voting is by secret ballot. The Constitution does not provide for the re-election of the Vice President, yet in practice it is there. Dr. S. Radhakrishnan had two consecutive terms as Vice-President before he was elevated to the Presidency.

Qualifications for the Office

A candidate for the office of the Vice-President must possess the following qualifications : (1) He must be a citizen of India. (2) He must not be less than 35 years of age. (3) He must be eligible for election as a member of the *Rajya Sabha*. (4) He must not hold any office of profit under any government. (5) He must not be a member of either House of Parliament or of any State

Legislature. In case a member of a State Legislature or Union Parliament is elected as Vice-President, he must resign his membership before entering upon the office. There is a feeling among the constitutionalists of the day that if the Vice President, by custom or usage, is to be elected as the Union President (as our past experience shows), then the decisive criterion for choosing a Vice-Presidential candidate in future should also be his suitability in age and health for possible succession to the Presidency.

Term of office

The Vice-President is elected for a period of five years. But he may resign his office before the expiry of the normal term. While resigning his office, the Vice-President must address his letter of resignation to the President. The Vice-President may also be removed from his office by a resolution of the *Rajya Sabha* passed by an absolute majority and agreed to by the *Lok Sabha*. To fill a vacancy of the Vice-President, caused by death, resignation, removal or otherwise, an election is held as soon as possible after the occurrence of the vacancy, and the person so elected is entitled to hold office for a full term of five years. All doubts and disputes arising out of or in connection with the election of the Vice-President are enquired into and decided by the Supreme Court, whose decision on the matter is final. As provided in Art. 63 of the Constitution, the Vice-President must, before entering upon his office, make and subscribe before the President or some person appointed by him, an oath or affirmation in the prescribed form. As chairman of the *Rajya Sabha*, the Vice-President draws a salary of Rs. 2,250 per month.

Functions of the Vice-President

The Vice-President of India is the *ex-officio* Chairman of the *Rajya Sabha*. He presides over its deliberations, conducts its proceedings and maintains order. He does not normally vote in the Council of States. He votes only in case of a tie in *Rajya Sabha*. The Vice-President may be called upon to discharge the functions of the President when owing to absence, illness or any other cause, the President is unable to discharge the duties of his office. During the period the Vice-President acts as President, he exercises all the powers, enjoys all immunities and receives such emoluments, allowances and privileges to which the President

is entitled. He, however, does not receive pay and allowances appertaining to his original office.

In case of President's death or resignation, the Vice-President holds the vacant office only for a maximum period of six months. For, under the Constitution, the election of the President cannot be delayed for more than six months. Thus, the Indian Constitution does not make the succession of the Vice-President to the office of the President permanent, though it is automatic till a regular election is held within six months. Our Constitution also does not define what is inability or who is the final authority for determining inability of the President. The past experience, of course, shows that the President himself takes this decision. In 1961, when Dr. Prasad went on a tour of the Soviet Union, Dr. Radhakrishnan acted as the President. Dr. Zakir Hussain's sudden death on May 3, 1969 created a strange situation. For about five hours the Republic of India was without a President and the Defence Forces of the Union without a Supreme Commander. At this some critics suggested that there is need for close look at the assumptions and procedures for presidential succession, for it is a vital political question.

Thus we see that the Vice-President of India is not an effective part of the Government. Like the Vice-President of America, he is also 'His Superfluous Highness'. Prof. T. K. Tope writes : "The Vice-President of India is like the Prince of Wales in some respects. His constitutional position is similar to that of the Vice-President in the Constitution of U. S. A. The Vice-President of U. S. A. presides over the Senate, but is not a member of the body. He also votes in case of a tie. But, unlike the Vice-President of India, he attends the cabinet meetings. This enables him to equip himself with the knowledge of the executive side of the Government. In India, such a practice is not necessary, because the President of India, it is said, is a constitutional head."*

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2. *R N. Misra* : The President of the Indian Republic.

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CHAPTER 27

The Government of the Union

(THE UNION EXECUTIVE)

THE COUNCIL OF MINISTERS

SECTION I

THE COUNCIL OF MINISTERS

The Constitution (Art. 74) provides for a Council of Ministers with Prime Minister as its head to aid and advise the President in the exercise of his functions. The Prime Minister is appointed by the President, who also appoints other Ministers on the advice of the Prime Minister. The size of the Council is not fixed. It is left to the discretion of the Prime Minister to determine its strength. The Council of Ministers includes Cabinet Ministers, Ministers of State, Deputy Ministers and Parliamentary Secretaries. The Cabinet is the nucleus of the Council of Ministers or, as it is said, an 'inner ring of the Council.'

The choice of the Prime Minister

Our Constitution is silent as to how the President should choose the Prime Minister. It does not also say if the Prime Minister must necessarily belong to the House of People or may be a member of other House of Parliament. It simply lays down that the person to be appointed as Prime Minister must be able to enjoy the confidence of the majority of the members in the *Lok Sabha*. If the letter of the law is to be strictly followed,

a person may be appointed as Prime Minister for little less than six months even (i) without his being a member of the Parliament, and also (ii) without his having a majority at his back in the *Lok Sabha* for the time being. But in view of the fact that India has adopted the British parliamentary form of government, she follows the British convention in respect of the selection of the Prime Minister. The Indian President, like the British Queen chooses as Prime Minister a person, who is an elected member of the *Lok Sabha* and is able to command the support of the majority in the House of People.

As a matter of fact, the appointment of the Prime Minister by the President is a constitutional formality. The latter has to appoint the leader of the majority party in the *Lok Sabha* as Prime Minister. Moreover, it is neither constitutional nor possible to appoint a person as Prime Minister without his being a member of the Parliament. Though the Prime Ministers in India have so far been selected from the lower house (which is the more popular and representative chamber), yet the Constitution does not specifically prevent a member of the *Rajya Sabha* from being selected as Prime Minister.

There are, of course, certain circumstances in which the President may have some freedom of choice with regard to the appointment of the Prime Minister. These circumstances are : (i) when no single party or a coalition commands a majority in the House of People to form a government ; (ii) when there is no obvious successor to the Prime Minister, who dies in office.*

Appointment of other Ministers

The Indian Constitution expressly provides that the other Ministers shall be appointed by the President on the advice of the

* Immediately after the death of Pt. Nehru on May 27, 1964, Shri G. L. Nanda, senior-most minister, was sworn in as the acting Prime Minister by the President. Some constitutional experts considered the appointment of the acting Prime Minister as irregular and unnecessary. It was argued that the Indian Constitution contains no specific provision for automatic succession, when the Prime Minister dies in office. The President should have, therefore, asked the Council of Ministers to continue in office (as is the case in England) until a new leader was elected and sworn in as Prime Minister. Those who do not agree with this view-point hold that with the death of the Prime Minister, the Council stood dissolved for it is clear from language of Art. 74 (i) that there cannot be a Council of Ministers without a Prime Minister. The President, therefore, did right thing in asking Mr. Nanda to act as Prime Minister until the election of a new leader.

Prime Minister. It, obviously, means that the choice of the President with regard to Ministers is limited. The selection of the Ministers is entirely the business of the Prime Minister, who is also free to determine the size of the Council of Ministers. Although in theory the Prime Minister is free to choose his colleagues, in practice his freedom is greatly restricted. He has to take into account various factors—personal, political, financial and administrative—in deciding about the membership of his Council. He must also give due importance to his party-men, who have distinguished themselves by their administrative ability and party work. He has to see that the various principal regions of the country and the major divisions of its population are properly represented at the Council of Ministers.* He cannot fail to include the representatives of the important minority communities like the Muslims and the Sikhs. According to Pran Chopra of *The Statesman*, Sri Shastri attached the highest importance to integrity in the choice of his colleagues. For, he believed that only a government run by men of integrity could inspire confidence among all the sections of the people.

As provided in the Constitution, a Minister must be a member of either House of Parliament. A non-member may be appointed a Minister provided he or she gets a seat in Parliament within six months from the date of his/her appointment. This provision has been made to secure the services of men and women of ability, (i) who may not, for the time being, be members of the legislature or, (ii) who are competent of holding the ministerial posts but have been defeated in the election†. The strength of the Council of Ministers has so far not exceeded 56 (1968).‡ Before a Minister enters upon his/her office, the President administers to him/her the oaths of office and secrecy according to the forms set for the purpose in the Third Schedule.

*Regional factors have played an important part in the selection of ministers even in countries like United States and Canada. In Britain also the geographical considerations are attached some importance in the formation of the Cabinet.

†The tendency so far in India has been against the appointment to the Ministry of those who have been defeated in the election. There have been, of course, some deviations from this practice in the States, as it is evident from the appointments of Shri Morarji Desai, C. Rajagopalachari and C.B. Gupta.

‡The Administrative Reforms Commission has recommended that the strength of the Council of Ministers at the centre should, in no case, exceed 45. It should remain normally 40.

Salaries and allowances of the Ministers

It is provided in the Constitution that the salaries and allowances of Ministers shall be such as Parliament may determine by law from time to time. The Prime Minister, at present, draws Rs. 5,000 per mensem. Every Minister, other than the Deputy Minister, is paid a monthly salary of Rs. 2,250. The Deputy Minister receives Rs. 1,750 per month as salary. The Cabinet ministers, in addition, get a sumptuary allowance of Rs. 500 per month. Their other facilities include a free house, free electricity, free air-conditioners, free water, ■ free telephone, ■ free car, a free messenger (whom he uses as his personal servant), a free gardner and free furniture of his own choice. Such ■ living in Delhi, Bombay or Calcutta costs not less than Rs. 5,000 ■ month. Hence, there is a perpetual criticism of the ministerial hypocrisy.

Removal of Ministers and Prime Minister

As laid down in Art. 75 (2) of the Constitution, the Ministers hold office during the pleasure of the President. It, obviously, means that the President can dispense with the services of Ministers at his pleasure. But, in actual practice, the President by himself has no independent voice in the matter of dismissing a Minister. He exercises this power on the advice of the Prime Minister.

The need for excluding a particular Minister from the Ministry arises under various situations as (a) when there are fundamental differences between the Prime Minister and a Minister on policy matters; (b) when there are serious doubts about a Minister's integrity; (c) when a Minister is found to be inefficient to run the departments under his control; (d) when there is unusual pressure of adverse public opinion.* It would not be out of place to mention here that the Prime Minister would generally prefer to exclude ■ Minister from the Cabinet by tendering the resignation of the entire cabinet and then reconstituting a new one by eliminating the

*Shri Shyama Prasad Mukherjee and K.C. Neogy resigned because of their disagreement with Pt. Nehru over the Pact, which he had concluded with Liaquat Ali Khan, the Prime Minister of Pakistan. Nehru had to exclude Mr. Menon from the Cabinet because of adverse public opinion; Shastri resigned in 1956, when two major accidents shook the country's confidence in the efficiency of railway administration. Shastri could not keep his Finance Minister T. T. Krishnamachari in his Cabinet, when it was alleged that T. T. K. had misused his ministerial position to help his sons, who were engaged in business.

undersiable Minister. Mr. Morarji was, however, turned out of the Cabinet in an unceremonious way. He himself complained : "I have been asked to quit the ministerial post like a clerk." Usually, a hint from the Prime Minister to a member of his Council is sufficient to make him resign.

As regards the dismissal of the Prime Minister by the President, it is argued that no President would easily take on himself the responsibility of such a strong step without having the overwhelming support of the Parliament and public opinion. Moreover, the President would venture to take such a step only when he is assured that the Prime Minister has lost the confidence of the Parliament. But, if the Prime Minister has lost his popularity to that extent, the Presidential action may not be necessary at all. Parliament itself may by vote of censure remove the Prime Minister from his office.

Allocation of Portfolios

The Council of Ministers is a collective embodiment of the Government of India. But for the more convenient transaction of business, the Prime Minister, with the formal approval of the President, allocates portfolios among his colleagues. His freedom in this respect is, however, limited by many practical considerations. Before giving his final decision about the allocations of portfolios, the Prime Minister weighs the claims and preferences of the Ministers for a particular department. He also sees that the allocation is rational.* The experience of the last about twenty years reveals that the Prime Minister's free choice generally applies to less important offices. Pt. Nehru could not ignore the wishes of Sardar Patel, who was keen in keeping portfolios of Home and States. He had to give Finance to T.T.K., when he declined to join the Cabinet unless he was given the portfolios of his choice. Sri Nehru had to drop the proposal of shifting S. K. Patil's portfolio, from Food to Railways on the latter's opposition. Shri Lal Bahadur Shastri could not be rational in the allotment of portfolios, because he could not afford to disregard the wishes of some powerful and influential colleagues. It is, however, not appreciable from the point of view of administrative convenience or

*Sri Lal Bahadur Shastri was criticised for splitting up the subjects relating to Commerce and Industry and then assigning them to two different persons. The combination of Communications and Parliamentary Affairs was decried as incongruous.

efficiency. But, at the same time, there is nothing wrong in accommodating the colleagues, if it helps the Prime Minister in smooth working of the Government.

THE CABINET AND THE COUNCIL OF MINISTERS

(Cabinet Ministers, Ministers of State, Deputy Ministers)

As a result of the gradual reorganisation of the machinery of the government, the members of the Council of Ministers have been divided into three categories : Cabinet Ministers, Ministers of State and Deputy Ministers. These categories determine their rank, emoluments and political importance.

Cabinet Ministers

The Cabinet Ministers by themselves form a separate body, called the Cabinet. The Cabinet is the nucleus of the Council of Ministers. It is often described as a wheel within a wheel, its two outer rings being the majority party in the *Lok Sabha* and the Council of Ministers. The Cabinet is composed of the senior-most members of the Council of Ministers, who are chosen generally for their party work and established reputation and ability in the political and administrative fields. The Cabinet Ministers hold the charge of the most important portfolios, such as Finance, External Affairs, Defence, Commerce, Home Affairs, Railways etc. Their selection depends mainly on the Prime Minister, who is bound to be influenced by political and party considerations. It is necessary to keep the Cabinet a reasonably small body in order to make it a 'widely thinking, planning and deliberative body'. It was recommended by the Administrative Reforms Commission that a compact Union Cabinet consisting of not more than 16 members should constitute the norm. It was hoped that such a body could 'ensure homogeneity, speed and purposeful functioning'. The size of the Indian Cabinet during the last twenty years has remained around 12 to 19.*

* Nehru was often criticised for keeping large and unwieldy cabinets. Small Cabinets have, no doubt, many advantages over the large ones. But, despite this, it has not been possible, for many countries to keep their Cabinets small because of the enormous increase in the functions of the State. In 1962, when a resolution was moved in the *Lok Sabha* suggesting a reduction in the size of the Council of Ministers, Pandit Jawaharlal Nehru was not opposed to it. He argued 'merely to say that the Ministry should be reduced has no meaning to me. If the work is greater, it has to be done efficiently.' Shri Lal Bahadur Shastri justified a large Cabinet in view of the vastness of the country and the nature of problems confronting it.

The Ministry, as compared with the Cabinet, is a much larger body. It consists of all the three categories of Ministers, and as a whole, it, numbers over 50. It does not meet as a body for the transaction of government business. It has no collective functions. It is only the Cabinet that meets for the purpose and it has both collective functions and collective responsibility.

Ministers of State

Ministers of State also hold Cabinet rank but they are not members of the Union Cabinet. They attend the Cabinet meetings only when they are specially invited and when the subjects with which they deal come up for discussion or when the Cabinet Minister concerned is unable to be present. They are junior Ministers attached to the Cabinet Ministers and their duties are administrative in character. They hold separate but lesser portfolios or they are in charge of a department within a Ministry under a Cabinet Minister. Sometimes, their duties are not easily distinguishable from those of a Deputy Minister.

Deputy Ministers

Deputy Ministers are next to the Ministers of State in rank. They do not hold independent charge of any department. They are generally compared to the Parliamentary Secretaries or Under-Secretaries in Britain. They perform such duties as are assigned to them by the Cabinet Ministers. Normally, their duties include : (i) answering of questions in Parliament on behalf of Ministers concerned and helping to pilot bills ; (ii) explaining policies and programmes in the general public and maintaining liaison with members of Parliament, political parties and the press ; and (iii) undertaking special study or investigation of particular problems, which may be entrusted to them by the Minister concerned. The Deputy Ministers are not entitled to attend the Cabinet meetings.

Parliamentary Secretaries

Besides these three types of Ministers, there are Parliamentary Secretaries also. They are appointed by the Prime Minister, who swears them into office. They are neither Ministers nor do they exercise any power. They also do not have any administrative responsibility. Their function is confined to assisting the Ministers

*Pylee, M.V.: *Constitutional Government in India* P. 220.

in the discharge of their parliamentary functions. They are honorary officers and they get their usual allowances as admissible to every member of the Parliament.

SECTION II

FEATURES OF THE INDIAN CABINET SYSTEM

The Indian Constitution does not use the word Cabinet, but it does incorporate the essential features of the Cabinet system, as it operates in Britain. The chief characteristics of the British Cabinet are the ascendancy of the Prime Minister, political homogeneity, responsibility to the House of Commons, and collective responsibility. The Indian Cabinet system works on all these principles and has, in addition, special features of its own.

President—A Constitutional Executive Head

The Indian President, like the King in England, is a constitutional executive head of the State. He takes no part in the politics of the country, nor does he attend or preside over the Cabinet meetings. Although the Cabinet is, in theory, meant to aid and advise him, yet he really stands outside it. For, he must avoid the suspicion of partisanship. It is true that every action decided upon by the Cabinet is taken in his name, but he has no responsibility in the matter. If the government runs well, he does not get any credit. If things go wrong, there is no reason to blame him. For, like the British King, he can do no wrong. The Government is, in fact, run by the Cabinet, and to it goes the credit or discredit of administration. Besides, the President has no control over the Cabinet. He can at the most influence its decision, and that, too, in a very limited measure.

Principle of Collective Responsibility

The Indian Cabinet works on the principle of collective responsibility. The essence of this principle is (a) that each member of the Cabinet is responsible for the decisions of the Cabinet as a whole and is bound by them. Once, the Cabinet has formulated some policies, all its members are expected to publicly support them regardless of their private feelings on the matter. In the words of Lord Melbourne, *they must all tell the same story*; (b) all the members of the Cabinet must present a united front in Parliament in defence of their policies and, without exception, must resign or ask the President for an immediate dissolution of the Parliament, if the *Lok Sabha* refuses to support it. Obviously,

it means that Cabinet works as a team and all its members sink or swim together. It also implies that the Ministers remain in power so long as they enjoy the confidence of the House of People. Another aspect of the collective responsibility is that the Cabinet is responsible even for decisions taken by individual Ministers. In the words of Ivor Jennings, "This principle assumes that the defective administration by or under the control of any Minister should be laid to the door not of the Minister but of the Cabinet."

As such, a mistake made by a single Minister may bring about the ruin of the whole team. Moreover, this principle does not permit any member of the Cabinet to openly criticise or oppose any of its decisions. If he differs from it, the only alternative for him is to resign. The principle of collective responsibility, thus, limits the powers of the individual ministers, of the Cabinet as a whole, and of the Prime Minister. But, at the same time, it helps to channel the ambitions of the politicians and, thus, gives strength to the Cabinet.

(c) *Ascendancy of the Prime Minister*

The Prime Minister is the key-man in the Cabinet. The Union Cabinet works under his leadership. He is central to its formation, life and death. He determines its membership and allocates business. He exercises general supervision over the work of his colleagues, who look up to him for inspiration and guidance. He also co-ordinates the activities of various departments and, thus, helps to impart harmony and homogeneity to the Cabinet. In case of any differences between the two Ministers or departments, the Prime Minister tries to settle them. And, if a Minister refuses to carry out his instructions, he can demand his resignation. He controls the agenda of the Cabinet and presides over its meetings. He is the sole channel of communication between the Cabinet and the President. He is the spokesman of the Government on all important matters. Both Parliament and nation look to him for authoritative pronouncements with regard to the governmental policies. In short, he is the working head of the State and holds a pre-eminent position. Mr. V. Lingamurthy wrote in September 1959, "In India a feeling of the indispensability of Mr. Nehru is pervading the minds of the people and this also explains the paramourty of the Prime Minister." (For details see section IV of this chapter).

(d) Political homogeneity

Our cabinet system works also on the principle of political homogeneity. All the Ministers are drawn from the same political party. They, therefore, have more or less the same political views, and subscribe to them. Their loyalty to persons and principles is also, to a great extent, common. In the earlier stages of his career as Prime Minister, Pt. Nehru included some non-congressmen in the Cabinet. For, he was anxious to make it as broadbased as possible. He also wished to create an impression that the Congress, despite its majority in Parliament, did not want to monopolize power. Hence, of the fourteen Cabinet Ministers in the first Council of Ministers, there were five non-congressmen (Dr. John Mathai, Sri R.K. Shanmukham Chetty, Dr. H.C. Bhaba, Dr. B.R. Ambedkar and Dr. Shyama Prasad Mukherjee). Gradually, their number was reduced, with the result that by 1958 the senior level of the Council of Ministers was exclusively Congress.

(e) Co-ordination between the Executive and the Legislature

The members of the Union Cabinet are for the most part the members of the *Lok Sabha* or *Rajya Sabha*. This provides for harmony and co-ordination between the executive and the legislature. No Government can act with strength and promptitude, if it is not sure of majority support in the legislature. Coalition cabinets, have, therefore, proved weak and unsuccessful. In the times of Pt. Jawaharlal Nehru and Lal Bahadur Shastri, there has been harmony and co-ordination between the two organs of the Government. But Mrs. Gandhi's Government had to steer through very difficult times in the legislature. The recent elections (1971) have, however, put her in a very strong position. There is sure to be close harmony and co-ordination between the executive and legislative, as it was in the days of her predecessors.

(f) Special Features of the Indian Cabinet System

Though in form, functions and powers, the Indian Cabinet follows the established British model, yet it is not a carbon copy of the British original. It has developed its own special features :

(1) The British Prime Minister's powers and functions are based largely on constitutional conventions. In India, on the other hand, the role of the Prime Minister is described in the Constitution itself. Besides, unlike that of his counter-part in England, the office of the Indian Prime Minister is created by the constitution and his authority carries with it constitutional sanction.

(2) The Prime Minister in Britain must be a member of the House of Commons and he cannot take part in the discussions of the House of Lords. The Indian Constitution does not specifically prevent a member of the Upper House (*Rajya Sabha*) from becoming the Prime Minister. Also, he can take part in the proceedings of both the Houses.

(3) There is no individual responsibility of Ministers to the Parliament, nor is there a codified obligation for the President to act always on the advice of the Council of Ministers.

(4) The Prime Minister in England is first among equals. But the Indian Prime Minister is vested with the formal headship of the Council of Ministers and his primacy over all other Ministers is a constitutional prescription. The stability of the Cabinet depends entirely on the personality, qualifications and ability of the Prime Minister and he is made the key-figure and responsible for success or failure of his Cabinet.

(5) Under the Indian Constitution, a person who is not a member of either House of Parliament can be a Minister. There is no such practice in Britain.

(6) Another distinguishing feature of the India Cabinet system is that a Minister, whether he is a member of Parliament or not, has the right to attend both the Houses and participate in the discussions. The only restriction placed upon him is that he cannot vote. Similarly, a Minister, who is a member of one House, has the right to appear in the other House and participate in its proceedings except for voting.

(7) The Prime Minister has always been a member of the House of People, and one or other of his senior colleagues in the Cabinet has always been a member of the Council of States.

(8) There has been to-and-fro movement between the Central Government and the Chief Ministership in the states: Rajgopalachari and Mehtab moving out Pant, Desai and Chavan coming in. This has indeed been, a great source of strength for the Cabinet at the Centre.

(g) *Super-Cabinet—Inner-Cabinet—Kitchen-Cabinet.*

According to Michael Brecher there has always been a 'Super-Cabinet' within the Indian Cabinet. In the earlier years, the 'Super-Cabinet' consisted of two men—Nehru and Patel, who made all the decisions of substance. They, however, regularly sought the counsel of Maulana Azad, the dean of India's nationa-

list Muslims. After the death of Patel, the Prime Minister relied heavily on his three colleagues : Azad, Ayyangar and Kidwai . By 1954 Ayyangar and Kidwai were died. The "Inner Cabinet" subsequently comprised Pant, Desai and Azad in domestic affairs and Menon in foreign policy. Maulana's death in 1958 left the domestic field to Pant and Desai. With the death of Pant and fall of Menon, Desai was left to be the senior-most counsel of Nehru.

After the death of Nehru, in 1964, Lal Bahadur Shastri became Prime Minister. During his term of office the "Inner Cabinet" included T.T. Krishnamachari, Mrs. Indira Gandhi, G.L. Nanda, S.K. Patel and Sanjiva Reddy.

Mrs. Gandhi's "Inner Cabinet" has been changing from time to time. In the earlier stages Y.B. Chavan, Ashok Mehta, Dinesh Singh and Subramaniam were the members of her "Inner Group." After the fourth general elections, the Prime Minister dropped Subramaniam and Ashok Mehta from her 'Inner Cabinet,' and chose Fakhruddin and Dr. Karan Singh as its new members. Her "Inner Group" also came to be known as her 'Kitchen Cabinet.' Since the Congress split in October 1969, Jagjivan Ram has emerged as an important member of the "Inner Cabinet." The fifth general elections have made Mrs. Gandhi a very powerful Prime Minister. The complexion of her Inner Cabinet and "Inner Group" may not undergo a significant change, but the influence of the members of her Inner Cabinet will not be as great as it was before.

SECTION III

CABINET AT WORK

The proper working of the Cabinet is a matter of vital importance. For, on it depends largely the efficiency of administration and progress of the country. In India, there have been eight Cabinets. so far—five under Nehru's leadership, one under Shastri and two under Mrs. Gandhi. In spite of many ministerial resignations and reshufflings of portfolios, the Indian Cabinet system has, as a whole, maintained remarkable stability and continuity.

Meetings, Quorum, etc.

The Indian Cabinet generally meets once a week. In case of some important and urgent business, it can hold more than one meeting a week. Its meetings are held at *Rashtrapati Bhavan* (New Delhi), where the Cabinet Secretariat is also situated. The duration of the Cabinet meetings depends on the nature of the

agenda. The Cabinet has, at times, sat for more than four hours at a stretch. The Constitution does not fix any quorum for Cabinet-meetings.

President and Participants

The Prime Minister presides over the Cabinet meetings. In his absence the senior-most Minister takes the chair.* In accordance with the practice in vogue, only the Cabinet Ministers are entitled to attend the meetings. Ministers of State attend only when they are asked and when the subject relating to their portfolios comes up for discussion. Chief Ministers of States are, sometimes, invited to attend the Cabinet meetings, when the questions relating to their States are discussed and their presence is considered helpful.† Experts on economic, scientific and military affairs are also, at times, invited to give technical advice.‡

Procedure of Work

Cabinet procedure in India is similar to British-type Cabinet elsewhere. The agenda is prepared by the Cabinet Secretariat and then circulated to all the Cabinet members. They also receive the papers connected with the agenda. Members of the Cabinet attend all meetings and there is free and frank discussion. Each Minister is expected to take active part in discussion of items under his administrative jurisdiction. A vote is taken rarely. The decisions are arrived at on the basis of mutual discussion and understanding. The Prime Minister can permit discussion on an item not in the agenda, provided it is of great urgency. The decisions taken at the Cabinet meetings are forwarded to the Ministries concerned for implementation.

There are no definite rules as regards the subjects to be brought up for Cabinet's decisions. Matters of routine nature are disposed of by the department concerned. Only very important issues are referred to the Cabinet. Sometimes, even major problems are decided by the Minister concerned in consultation with the Prime Minister. In some cases, the Prime Minister may take the decision on his own responsibility and then inform the Cabinet.

* Among these who had the opportunity to preside over the Cabinet meetings at one time or the other are : Maulana Azad G. B. Pant, Morarji Desai, G. L. Nanda.

† The Chief Ministers of Bengal and Orissa attended the Cabinet meetings in 1963 when the Central Government was faced with a serious food problem in the eastern region.

‡ The Deputy Chairman and the members of the Planning Commission have often been asked to attend the Cabinet meetings.

Secrecy of Decisions and Records

The Indian Cabinet functions in an atmosphere of secrecy, and, under the Constitution, even a Court of Law cannot enquire to what advice was tendered by a Minister to the President. The records of Cabinet meetings are kept confidential and, in matters of exceptional secrecy, the decisions are not put down in writing.

Cabinet Committees

In order to discharge its functions efficiently, the Cabinet works through various committees. Some of them are of permanent nature, while others are mere *ad hoc* committees. The permanent or Standing Committees include Defence Committee, Foreign Affairs Committee, Economic Affairs Committee, Parliamentary Affairs Committee, etc. etc, and they deal with the subjects as are indicated by their very names. The *ad hoc* committees are set up to consider special problems that may come up before the Cabinet from time to time. Such committees are dissolved after their task is completed. One of such committees was constituted in November, 1964 to examine the charges of corruption levelled against the Chief Minister of Orissa and his colleagues.

These committees are usually composed of more prominent members of the Cabinet, and, in most of them, the Prime Minister and the Finance Minister have their places. The committees have become so important that they have reduced the Cabinet to practically an approving body; the more important decisions being arrived at by them.* Thus, in view of the great importance of the Cabinet Committees, the Ministers often feel aggrieved, particularly, when they are left out of one committee or the other. Dr. Ambedkar bitterly complained to the Prime Minister, when he was excluded from the Economic Affairs Committee, in spite of his being primarily a student of economics and finance. In his statement, on the occasion of his resignation from the Cabinet in Oct. 1951, he remarks : "The Cabinet has become merely a recording or registration office of the decisions already arrived at by committees. They work behind the iron curtain. Others, who

*While resigning from the Cabinet in 1956, Mr C.D. Deshmukh observed, "It is true that a committee of the Cabinet was constituted to decide boundaries matters, but it was never the intention that the Committee should decide the fate of Maharashtra and Bombay City on behalf of the Cabinet..... My complaint is that the Prime Minister and the Committee of three have arrogated to themselves powers not delegated to them by the Cabinet as a whole."

are not members, have only to take joint responsibility without any opportunity of taking part in the shaping of a policy. This is an intolerable proposition."

Similarly, when an Emergency Committee of six Cabinet Ministers was set up in October, 1962 and it assumed an unusual importance, the other twelve Ministers felt hurt at their exclusion. It is said that three of them even protested to the Prime Minister against their being kept out of this Committee. The Prime Minister did not pay heed to their protest because of serious Chinese threat to which India was then exposed. Yet early in 1964, he made an attempt to revive the regular Committees to enable Ministers (who were not included in the Emergency Committee) to take part in decision-making.

Cabinet Secretariat

The Indian Cabinet has its own secretariat. It consists of (a) Main Secretariat, (b) Organisation and Methods Division, (c) Military Wing, (d) Economic Wing, (e) Central Statistical Organisation. *The Main Secretariat* is chiefly concerned with the preparation of agenda for the Cabinet meetings. It also circulates it among Cabinet Ministers and records the proceedings of the Cabinet meetings. *The Organization and Methods Division* is entrusted with the task of evolving better methods of administrative procedure with a view to improve efficiency of government. It works directly under the Prime Minister. *The Military Wing* looks after the secretarial work of the Cabinet Defence Committee, while the *Economic Wing* serves the Economic Affairs Committee and other Committees connected with problems of production and distribution. *The Central Statistical Organisation* is responsible for co-ordinating the statistical work of different ministries and for the publication of a number of periodicals.

CABINET AND BUDGET PROCEDURE

Preparation and Presentation

The budget is a very important subject and it affects every department of the Government. But it is kept outside the purview of the Cabinet. It is prepared by the Finance Minister and is shown only to the Prime Minister and perhaps to one or two senior Ministers. There is no room for the whole or a material section of the Cabinet to examine or advise upon it or even to go through it. In order to safeguard secrecy, all consultation is avoided. The detailed taxation proposals are divulged to the Cabinet only on the budget-day in Parliament.

Critic's View-Point

The practice of preparing and presenting the central budget is often criticised. Sri Rajgopalachari, while commenting on the budget of 1963-64, observed : "The budget is hatched by the officials working under the nominal guidance of the Finance Minister. If both the Prime Minister and the Finance Minister happen to be persons blissfully ignorant of the business of budget-making, when all economy of the country comes under the direct or indirect influence of the budget, the consequences are, what we see now, disastrous." Mr. Asok Chanda, former Comptroller and Auditor-General of India, also expressed dissatisfaction with the present practice with regard to the budget.

Justification of the Procedure

The criticism of Mr. Chanda and Sri. C. Rajagopalachari is, however, not fully justified. It is true that the Cabinet cannot discuss the budget before presentation, but it can examine it afterwards. And it is always open to the Cabinet to modify the proposals before any mischief is done. Further, the Cabinet can even overthrow a budget altogether, in which case the Finance Member shall have to resign. So long as secrecy has to be maintained, there seems to be no alternative.

Does Indian Cabinet function smoothly ?

On account of the various safeguards, it is difficult to find out as to how exactly the institution works. Still, there is substantial evidence to prove that Indian Cabinet has not always functioned smoothly. There have been many resignations over policy matters. Four of them concerned economic issue in whole or part ; two arose from Indo-Pakistan relations ; one from state reorganisation and one from Mundhra Affair.*

Functions of the Cabinet

The Cabinet is the core of the Indian constitutional system. It is also the most powerful organ of the Union Government. Its functions are as numerous and as varied as the functions performed by a country's government. Being the supreme executive body of the Indian Union, it controls, directs and instructs the administration. It also sees that the will of the nation, as expressed

*Those who resigned from the Cabinet on the above issues were : Sri Shanmukham Chetty (1948), S. P. Mookerjee and K.C. Neogy (1950), Dr. John Matthai, Dr. Ambedkar (1951), V.V. Giri (1954), C.D. Deshmukh (1950), T.T. Krishnamachari (1958).

through the Parliament, is carried out. Besides, it lays down all national policies, and the Ministers incharge of various departments work as a team to give effect to them. No change of any importance in the policy can be carried without the Cabinet approval. The Cabinet is also responsible for initiating all legislation. It sets forth the programme of legislation at the opening of the parliamentary session. All government measures are introduced, explained and piloted through the Parliament by the Ministers. A bill moved by a private member has little chance of success without the support of the Cabinet. The Cabinet also performs some important financial functions. It prepares the budget and discusses it thoroughly after it is presented to the Parliament. It also determines the various ways and means of raising as well as of spending the revenues. Practically, all important appointments are made by the Cabinet. The Cabinet, as a corporate body, co-ordinates the work of various departments. It also settles the inter-departmental disputes. In short, the Cabinet is the real governing body in the Union, having enormous powers and vast responsibilities. In the words of M. V. Pylee, "The Cabinet is the formulator of national policies, the highest appointing authority, the arbiter of inter-departmental disputes and the supreme organ of co-ordination in Government."*

SECTION IV

THE PRIME MINISTER

(His Powers and Position)

The Prime Minister is the working head of the Union. He is principal adviser to the Union President and a connecting link between him and the Cabinet. Being the head of the Government and leader of the *Lok Sabha*, he is an automatic spokesman of the nation. He is also the most powerful functionary under the Constitution. His office calls for tact and talent of high order, for upon him depends the efficiency and morale of the administration. In view of the vast powers vested in him, Dr. Ambedkar had, thus, observed in the Constituent Assembly : "If any functionary under our Constitution is to be compared with the United States President, he is the Prime Minister and not the President.†

* *Constitutional Government in India*. P. 353.

† *C.A.D. Vol. II*, P. 998.

(a) *The Prime Minister is the leader of the majority party as well as the head of the Government.* After the elections of the Lok Sabha are over, the leader of the majority party is elected as Prime Minister. The Prime Minister then selects his colleagues and submits their names to the President to be formally appointed by him. The Ministers are, in fact, the nominees of the Prime Minister and they remain in office during the pleasure of the latter.* His resignation involves the resignation of all Ministers. He may, at any time, call upon any member of his Council to resign or may move him to a new portfolio. No Minister can afford to disregard his wishes for he knows it well that the Prime Minister can force him out by tendering his resignation and then reconstituting the Council of Ministers without him. According to A.C. Dash, "The Indian Prime Minister, like the German Chancellor, is superior to the entire Cabinet ; for under the Constitution he is declared to be the head of the Council of Ministers and all other Ministers are appointed and probably dismissed on his advice."†

In the selection of his colleagues, as in the allocation of business, the Prime Minister has constitutionally a very free hand. It is he who determines the size of the Cabinet and also the Ministers to be included in it. He may even select his colleagues from outside the ranks of the party, if he feels that a person is specially fit for a particular job. His freedom in respect of the formation of his government is, in fact, not unfettered. He is not as free politically as he is constitutionally. He is bound by various practical considerations. As Sir Ivor Jennings rightly remarks, "Some members of the Cabinet choose themselves and they have much to say about their assignment." Verity, the Prime Minister cannot easily pass over the other leading figures in his party. He must include certain persons in the Cabinet because of their administrative ability, as also in the interest of effectiveness of government and its inner harmony. A shrewd Prime Minister will always see that he gathers around himself colleagues, who are not only able but whose exclusion may be a source of embarrassment. The Indian Prime Minister cannot fail to include in the Cabinet the representatives of the important minorities. He has

*However, there have been instances when a Minister could not continue in office even when he had the confidence of the Prime Minister. The most conspicuous example is that of Mr. V. K. Krishna Menon, who, as Minister of Defence, was forced to resign in November, 1962 by pressure of public opinion, although the Prime Minister was very anxious to retain him in the Cabinet.

† Dash, A.C. *The Constitution of India* P. 288.

also to see that the various principal regions of the country and the major divisions of its population are properly represented at the Union Cabinet.

(b) *The Prime Minister is the Chairman of the Cabinet.* He fixes the dates of its meetings and also presides over them. He prepares agenda for the meetings, supervises the general conduct of affairs and ensures that there is adequate preparation of business before the final decisions are taken. Subject to the Cabinet ratification, he may even make important decisions, if necessary. He also co-ordinates the work of the Cabinet. He is frequently the arbiter of the disputes between Ministers. He resolves their differences with skill and authority. He is, thus, a court of appeal for his colleagues, who fail to see eye to eye with one another. In case of differences between any two departments, he may even impose his decision.* He has the right to be consulted by his colleagues on all matters, minor or major, controversial or otherwise. But the Prime Minister can dominate his cabinet only if, he is a strong and capable person.

(c) *The Prime Minister is the working head of the State.* He carries with him the responsibility for the formulation and execution of Government policy. He is also responsible for the efficiency and integrity of the Government. To achieve this object, he is authorised to effect any change in the distribution of portfolios among the members of his governmental team. He can also change the personnel of the Cabinet at any time by demanding a Minister's resignation or having him dismissed by the President. It has been aptly remarked that the Prime Minister 'can shuffle his pack as he pleases'. Besides, every Minister is directly responsible to him and he can pull him up for his indiscreet statement or negligence of departmental business. There is always a need for firm leadership from the Prime Minister, because the efficiency of Government is seriously impaired by the weakness or indecision on the part of the head of the administration.

(d) *The Prime Minister is the automatic spokesman of the nation.* He is the person to whom people instinctively turn in times of crisis or on formal state occasions for an authoritative expression of policy and opinion. For many, the Prime Minister

*Since the sphere of State has become very extensive and its functions have greatly multiplied, the work of co-ordination is, in the main, done by the Committees. Nevertheless, the Prime Minister exercises a general control over all departments.

is the Party and the Government. Some look up to him for guidance and inspiration. At times, he may become the personification of the political nation, as Lal Bahadur Shastri symbolised and articulated the national resolve to meet Pakistani aggression (in 1965) with firm determination. The Prime Minister represents the nation also in international consultations and negotiations.

(e) *The Prime Minister is the main link between the President and the Cabinet.* As head of the Cabinet, it is his duty to communicate to the President not only all the decisions of the Cabinet but also any additional information, relating to the administration as well as legislative proposals that the President may himself call for. The Prime Minister, therefore, keeps the President informed of State affairs and consults him on matters of broad public importance. The other Ministers have also access to the President and they meet him at least once a month. But it is for the Prime Minister alone to submit the Cabinet decisions to the President for formal sanction. This has been provided for in the interest of the unity of the Government. The Prime Minister is also the chief adviser to the President. He advises him in the discharge of his functions. Though the President is not legally bound to accept the advice tendered to him by the Prime Minister, yet he has to do so as a matter of political necessity.

(f) *The Prime Minister is the leader of the House of People.* He determines the dates of its meetings as also its programme for the session. He decides when the House is to be prorogued or dissolved. He also determines the membership of its various committees. Though there is a Minister for Parliamentary Affairs to ensure the smooth conduct of Government business in Parliament, yet the ultimate responsibility for the same is that of the Prime Minister. The Prime Minister is the chief spokesman of the Government in the Parliament. He expresses his opinion on important matters, takes part in important debates and also makes significant policy-statements. All the principal statements of policy and business are made by him and all the questions upon critical issues are often addressed to him.

(g) *The Indian Prime Minister, like his counter-part in England, has vast powers of patronage.* All major appointments of the Union Government are made by the President on his advice. The Prime Minister has a decisive say in determining the membership of committees and commissions, which are instituted by the Union Government from time to time. According to R. J.

Venkateswaran, the Indian Prime Minister holds more advantageous position than the British Prime Minister in respect of patronage. For, with the formal approval of the *Rashtrapati*, he appoints also the Governors of the States. Moreover, in the States, having Congress majorities in their legislatures, the Prime Minister has a major voice in the selection of the Chief Ministers and their cabinets. It would not be out of place to mention here that the British Prime Minister does not hold charge of any particular department; he confines himself to general supervision and over-all control of the ministry. But in India, the Prime Minister, in addition to the duties of co-ordination and supervision, is also incharge of some portfolios.

Conclusion.

Thus, we see that the Prime Minister of India occupies a position of supreme governing power. He is the linchpin of the Government. He is central to the formation of the Council of Ministers, central to its life and central to its death. He has a special status in the Union Parliament. In fact, all the powers, which are formally vested in the Indian President, are in reality those of the Prime Minister. Unfavourably impressed with the concentration of such formidable powers in the hands of the Prime Minister, Sri N.V. Gadgil, the former Governor of Punjab, once wrote : "...Unless the Prime Minister be a genuine democrat by nature, he is very likely to become a dictator".* Prof. K.T. Shah, a member of the Constituent Assembly, also, gave expression to his apprehensions in these words : "The Constitution concentrates so much power and influence in the hands of the Prime Minister that there is every danger to apprehend that the Prime Minister may become a dictator, if he chooses to do so.†

Great as his power may be, there is very little scope for his becoming a dictator. Political and constitutional necessities combine to ensure that, for the most part, the powers are exercised with respect for wishes and interests of others. Moreover, it is not easy for the Prime Minister to wield his powers in defiance of public opinion, which is one of the twin sources (other being his Party) of his strength. It would not be out of place to mention here that in addition to the control exercised by the electorate and public opinion over the activities of the government in

*Gadgil, N. V : *The Government and the Party. The Indian Journal of Public Administration*, Vol. III, No. 4 P.355

†-C.A.D. Vol. VIII, P. 234.

general, there are other checks operating within the frame-work of government upon the discretion of the Prime Minister in particular.

The Role of our Prime Ministers (1947-1971)

The office of the Prime Minister, in the words of Ivor Jennings, "is necessarily what the holder chooses to make it." It, obviously, means that importance of this office depends, in a great measure, on the personality and character of the Prime Minister. / India was fortunate enough to have her first Prime Minister in the person of Pandit Nehru. Though he did not have the much needed parliamentary or ministerial experience before he held the high office, yet he had other qualities and qualifications for being chosen as India's first Prime Minister. And, much to his credit, this great national leader (who held the Premiership for about 18 years, made this office more glorious and powerful. Unlike Nehru, Sri Lal Bahadur Shastri came to this office with vast parliamentary and administrative experience. He proved himself a worthy and strong Prime Minister of India. He also enhanced the prestige of the office. Mrs. Indira Gandhi assumed the office of the Prime Minister under very unfavourable circumstances. It was feared that she would remain a mere tool in the hands of her powerful colleagues. But, much to the credit of her statesmanship, she has not only emerged as a strong Prime Minister but has also created a world-wide image. She has very successfully established the fact that "not even the tallest among the Prime Minister's colleagues can measure upto the stature of the Prime Minister and claim parity with her." The success of the Congress (Ruling) in the recent elections (1971) is a great tribute to her greatness as a national leader. The people now look upon her with respect and confidence. They are hopeful of a bright future for India in her hands.

SECTION V

THE ATTORNEY-GENERAL OF INDIA

Our Constitution provides for an Attorney-General of India, who is the chief legal adviser to the President. Being the first law officer of the Union Government, he is closely connected with it. But, at the same time, he is neither a member of the Union Cabinet nor that of the Indian Parliament. As a head of the Indian Bar, the Attorney-General is entitled to audience in all courts within the territory of India. His office has, thus, been given a special status under the Indian Constitution.

Appointment, Qualifications, Remuneration etc.

The Attorney-General of India is appointed by the President and he holds office during the latter's pleasure. Any person fit to be a judge of the Supreme Court can be appointed to this high office. Obviously, it means that the holder of this office must be an Indian citizen. Besides, he must have either been (i) a judge of one or more High Courts for at least five successive years, or (ii) an advocate of High Courts for at least ten years, or (iii) a distinguished jurist. The appointment of the Attorney-General of India is not political, but it must be admitted that only a person, who agrees with the policy of the political party in power, would be able to discharge the functions of his office satisfactorily. The Attorney-General is entitled to receive such remuneration as the President may determine. At present, he receives a monthly remuneration of Rs.4,000. In case Government of India requires him to appear on its behalf in any High Court, the Attorney-General gets a daily fee in addition to monthly remuneration. He is, however, not allowed to do private practice.

Functions and Duties

Under Art.76 of the Constitution, the Attorney-General is required to give advice to the Government of India in legal matters. He is also to perform such other duties of legal character as are referred or assigned to him by the President. No other functionary of the State, including the Governor of a State, has the right to seek his legal advice on a constitutional issue. Nor is the Attorney-General allowed by the Constitution to tender such advice to the Governor of a State; if he asks for it. The latter should obtain such advice from the High Court. It was a mistake on the part of Mr. Dey, who recently advised the Governor of U.P. on the constitutional issue that arose in that State; particularly when the problem was referred to him by the State Governor and not by the President. As laid down in Art. 89 of the Constitution, the Attorney-General has the right to speak in either House of Parliament or in any of the committees of Parliament. He is, however, not entitled to vote. The Attorney-General has an assistant in the person of Solicitor-General to help him in his duties.

SECTION VI**THE COMPTROLLER AND AUDITOR-GENERAL OF INDIA**

The fathers of our Constitution wished to secure the highest standards of financial integrity of the administration. They wished

to safeguard the interests of the tax-payers. It was also their effort to make the legislative control over the executive complete and effective. To secure all this, they created the post of the Comptroller and Auditor-General of India (under the Constitution) and made special provisions to ensure the independence of this office.

Importance of the Office

The Comptroller and Auditor-General of India is an important functionary of the State. He is often described as 'one of the four pillars of our Constitution, the other three being the Legislature, Executive and the Judiciary'. With the help of this expert and independent agency, the Parliament scrutinizes the expenditure incurred by the various Ministries. It also ensures that the funds granted to the Government are spent for the purpose for which they are sanctioned and the Ministers keep their expenditure within the sanctioned limits.

Appointment, Salary, etc.

The Constitution has made specific provisions with regard to the Auditor-General's mode of appointment, procedure of removal and conditions of service. He is appointed by the President of India by a warrant under his hand and seal. His normal term of office is 6 years but he may resign his post before the expiry of the tenure. His removal is only possible by resolution of both the Houses of Parliament on grounds of proved misbehaviour or incapacity. His salary and conditions of service are determined by Parliament, and cannot be altered to his disadvantage after his appointment. At present, he draws a monthly salary of Rs. 4,000. His salary as well as the administrative expenses of his office (including salaries, allowances and pensions payable to persons serving in that office) are charged on the Consolidated Fund of India. After he has ceased to hold office, he is not eligible for any other office either under the Government of India or the Government of any state. All this has been provided to ensure his independence of the executive, which is necessary to enable him to discharge his duties satisfactorily.

Qualifications

Some members of the Constituent Assembly made suggestions with regard to the qualifications for this office. Prof. K.T. Shah,

for instance, expressed the view that the holder of this office should be a qualified Accounts Officer with not less than ten years' practical experience. This view did not find favour with the Assembly, nor could it arrive at any other unanimous decision. Hence, our Constitution does not provide specific qualifications for the incumbent of this office, who was described by Ambedkar 'the most important officer under the Constitution.'

Duties of the Comptroller and Auditor-General

The functions of the Comptroller and Auditor-General are derived in the main from the provisions of Arts. 149-151 of the Constitution. Sri A. K. Chanda, who himself worked as Comptroller and Auditor-General of India, explained his functions, which can be summarised as under :—

(a) The Comptroller and Auditor-General examines the accounts to satisfy himself that the parliamentary grants have been applied to the purposes for which they were intended. It is also his duty to see that the parliamentary grants have been spent according to law, rules and regulations.

(b) He sees that no money is drawn out of the Consolidated Fund of India without statutory authority.

(c) He prepares each year comprehensive accounts of the receipts and expenditure of each Government, classifying the transactions under respective heads and submits them to the Governments concerned. These accounts are designated as the Finance Accounts.

(d) He has also to prepare annually for submission to the President a General Financial statement incorporating a summary of the accounts of the Union and of all the States for the preceding financial year. This statement also includes the particulars of their balances and outstanding liabilities.

(e) Art. 150 of the Constitution empowers the Comptroller and Auditor-General, with the approval of the President, to prescribe the form in which Accounts of the Union Government and the State Governments are to be kept.

(f) He submits the Audit Reports relating to the accounts of the Union to the President and the reports relating to the accounts of a state to the Governor of the State.

FURTHER READING

1. *R.I. Venkateswarān* : Cabinet Government in India.
2. *Michael Brecher* : Nehru : A political Biography.
3. *G. Austin* : The Indian Constitution :
Corner-stone of ■ Nation.
4. *B. R. Misra* : Economic Aspects of the Indian
Constitution.
5. *T. K. Tope* : The Constitution of India.
6. *B. N. Rau* : India's Constitution in the Making.
7. *Sri vvor Jennings* : Cabinet Government.
8. *N. V. Gadgil* : Government from Inside.
9. *S. R. Sharma* : Parliamentary Government in India.

CHAPTER 28

The Government of the Union

(THE PARLIAMENT)

✓ Our Constitution (Art. 79) provides for a central legislature, called the Union Parliament. It consists of the President and the two Houses known respectively as the *Lok Sabha* (House of People) and the *Rajya Sabha* (Council of States). The *Rajya Sabha* represents the States comprising the Indian Union, while the *Lok Sabha* is representative of the people. The two Houses sit separately and are constituted on different principles. They also differ in their powers and functions. Though not a member of either House, the President is an integral part of the Parliament. He has various functions to discharge in connection with its proceedings.

SECTION I

THE RAJYA SABHA (*The Council of States*)

Composition

✓ The *Rajya Sabha* or the Council of States is the upper house of Parliament. It is sometimes called the 'House of Elders'. The Constitution fixes the maximum membership of the Council at 250, but its present strength is 240. Of these, 12 members are nominated by the President from amongst persons distinguished in the fields of literature, art, science and social service. The remaining

members (228) are the elected representatives of the States and the Union Territories.* In point of its membership, the *Rajya Sabha* is the second biggest chamber in the world, the first being the British House of Lords, having about 900 members.† The United States Senate (Upper House) consists of only 100 members.

Our Constitution does not grant absolute equality of representation to the States in the *Rajya Sabha*, as is the case with the Senate of America. There, each unit sends its two representatives to the upper house. But state quotas for the *Rajya Sabha* are proportionate to population. A careful examination of the relevant data, however, reveals that some weightage in representation has been accorded to smaller states. For example, Himachal Pradesh with its population of 3 million has 3 seats in the *Rajya Sabha*, whereas Madhya Pradesh with 41 million people has only 16 seats.) According to T. K. Tope, "The framers of the Indian Constitution followed the American model in giving representation to all States in the Council of States ; the Irish model in providing for nomination and securing the services of men of eminence and experience. The system of election seems to have been borrowed from the constitution of South Africa.*

Qualifications and Election of Members

A candidate for election to the *Rajya Sabha* (1) must be a citizen of India, (2) must be not less than 30 years of age, (3) must possess such other qualifications as may be laid down by Parliament. Elections to this House are indirect. The representatives of each State in the *Rajya Sabha* are not elected directly by the people but are elected by the elected members of the State legislature assemblies. The elections are held in accordance with the system of proportional representation by means of single transferable vote. As regards the representation of the Union Territories, the Constitution leaves the method of election of representatives to be determined by Parliament. The method now in vogue is that the representatives of the Union Territories in the Council of States are chosen by the electoral college constituted for the purpose in each Union Territory.

*Andhra Pradesh 18, Assam 7, Bihar 22, Gujrat 11, Himachal Pradesh 3, Haryana 5, Jammu & Kashmir 4, Kerala 9, Madhya Pradesh 16, Maharashtra 19, Mysore 12, Nagaland 1, Orissa 10, Punjab 7, Rajasthan 10, Tamil Nadu (formerly Madras) 18, Uttar Pradesh 34, West Bengal 16, Delhi 3, Tripura 1, Pondicherry 1, Manipur 1. Total=228.

†Eight hundred of these members are hereditary English and United Kingdom peers, and the average attendance in the House rarely exceeds 100.

*Tope, T. K : *The Constitution of India* P. 164

A Permanent House

The Council of States is a permanent House, and, thus, it is not subject to dissolution. But, at the same time, it is not a hereditary chamber. Its members are elected for six years, subject to the condition that one-third of them retire every two years. This provision enables the Council of States to retain its political complexion in a stabler manner than the House of People, which, after every election, is a completely new House. Its quorum is one-tenth of the total number of its members.

Officers of the Council

✓ The Vice-President of India is the *ex-officio* chairman of the Council. Its Deputy Chairman is elected by its members from amongst themselves. He performs the duties of the chairman, when the office of the latter is vacant or during any period, when the Vice-President is acting as or discharging the functions of the President. Besides these two officers of the Council, there is a panel of members called the Vice-Chairmen nominated by the Chairman for the purpose of presiding over the House in the absence of both the Chairman and the Deputy Chairman. The Secretariat of the *Rajya Sabha* is headed by a Secretary, who discharges the same functions as are discharged by the Secretary of the *Lok Sabha*.

The Chairman of the Council is not a member of the *Rajya Sabha*. He has no right to vote except in the event of a tie. Nevertheless, he enjoys a more exalted position than the Chairman of the American Senate. He recognises members to the floor, decides points of order, maintains order and relevancy in debates, puts questions and announces results. The American Vice-President permanently relinquishes the office of the President of the Senate on his succession to Presidency, but the Vice-President of India fills only a casual vacancy. He reverts to his original office as soon as the contingency of acting as President is over.

POWERS AND RELATIONS WITH THE LOK SABHA

Indian Council of States is neither as powerful as the American Senate, nor is it *at par* with its Australian counterpart. But it is definitely more powerful than the Canadian Senate. It has also more powers than the British House of Lords. As regards its relations with the *Lok Sabha*, the *Rajya Sabha* occupies a subordinate position. The *Lok Sabha* is more important, more powerful and more popular than the *Rajya Sabha*. As a matter of fact, the

superiority of the *Lok Sabha* over the *Rajya Sabha* is clearly recognised in the Constitution.

*In Case of Money Bills**

✓ In regard to Money Bills, the position of the *Rajya Sabha* is weaker than that of the *Lok Sabha*. A Money Bill can be introduced only in the *Lok Sabha*. After it is passed by the *Lok Sabha*, it is sent to the *Rajya Sabha*, which must return it with its recommendations within a fortnight. The *Lok Sabha* is free to accept or reject any or all of its recommendations. The Bill, as finally adopted by the *Lok Sabha* (whether with recommendations or without them), is deemed to have been passed by both the Houses. Then, it is presented to the President for his assent. If the *Rajya Sabha* fails to act within 14 days, the Bill is deemed to have been passed in the form in which it was passed by the *Lok Sabha*. Thus, the powers of the *Rajya Sabha* with regard to Money Bills are practically nil. It can only delay the enactment of Money Bill for 14 days.

The *Lok Sabha* must have a pre-eminent position in respect of financial legislation. For, it is this House which controls the Cabinet and it is their business to grant whatever funds are necessary for running the administration. However, the *Lok Sabha* must carry the Council with it, if it means to organise a smooth administration for the country.

In Case of Non-Money Bill

✓ In respect of bills other than the money bills (the ordinary bills) the *Rajya Sabha* has co-equal powers with the *Lok Sabha*. An ordinary bill can be initiated in either House and it must be passed by both Houses before it obtains the assent of the President and becomes an Act. The *Lok Sabha* has no power to overrule the *Rajya Sabha*. However, in case of conflict between the two Houses, the *Rajya Sabha* is put to disadvantage. The Constitution provides for a joint sitting to be held to resolve the deadlock. Since the decision at the joint sittings is taken by a simple majority of vote, the *Lok Sabha* is sure to dominate, for, its strength is more than twice that of *Rajya Sabha*.

*A Money Bill is one which deals with the imposition, abolition, remission, alteration or regulation of any tax; the regulation and borrowing of money; the custody of the Consolidated Fund or the Contingency Fund and the appropriation of money out of such a fund.

Though the House of People has a stronger position even in non-financial matters, yet it is not necessary for the *Lok Sabha* to have an upper hand in every joint sitting. In a joint sitting held in May 1961 to resolve the deadlock over the Dowry Prohibition Bill, it was *Rajya Sabha* which carried majority with it.

Control over the Executive

The *Rajya Sabha* is powerless in the sphere of its control over the Executive. For, under the Constitution, the Council of Ministers is collectively responsible to the *Lok Sabha* alone and not to the other House. The *Lok Sabha* can pass a vote of censure or no-confidence against the Cabinet. It can force the Government out of office. But no such power is enjoyed by the Council. It can simply discuss the Government policy and exercise some influence through questions, adjournment motions and critical speeches.

Special Powers of the Rajya Sabha

In spite of its limitations and subordinate position, the *Rajya Sabha* is not an ornamental super-structure or an inessential adjunct only. Also, it would be unfair to equate it with the British House of Lords, which is an unimportant chamber. The *Rajya Sabha* is an important part of our constitutional system, and it has a number of important powers. Under Art. 312 of the Constitution, the *Rajya Sabha* has the exclusive power to authorise the Parliament to set up one or more All India Services common to both the Union and the States. By passing a resolution with two-thirds majority the *Rajya Sabha* can transfer for a year any matter enumerated in the State List to the legislative competence of Parliament (Art. 249). Besides these exclusive powers, the *Rajya Sabha* exercises some powers jointly with the *Lok Sabha*, which relate to : (a) election and impeachment of the President ; (b) election and removal of the Vice-President and removal of Supreme Court Judges and the Comptroller and Auditor-General of India ; (c) approval of the Proclamation of Emergency issued by the President.

According to W.H. Morris-Jones, the *Rajya Sabha* has three outweighing merits : it supplies additional political positions, for which there is demand ; it provides some additional debating opportunities for which there is occasionally need, and it assists in the solution of legislative time-table problems.*

*Moris Jones : *The Government and Politics of India* P. 202.

Role of Rajya Sabha

While providing for a second chamber for the Union Parliament, the makers of our Constitution had three main considerations : (1) The *Rajya Sabha* would function as a federal second chamber representing the constituent units ; (2) it would function only as a revising and delaying chamber ; (3) it would come out as a 'House of Elders' in which persons of mature wisdom and rich experience would hold debates on questions of public interest in a non-partisan manner. But the role of the *Rajya Sabha* in actual practice has been quite different from what was contemplated by its makers. Being the nominees of the different political parties, its members do not act as spokesmen of their respective States. Besides, the *Rajya Sabha* has neither achieved much success as a revising chamber nor has it proved effective as a delaying chamber. According to Norman D. Palmer, "It seldom suggests revisions of bills sent to it from the House of People, and very few of the suggested-revisions are accepted by this House. Another disappointing feature of its working is that, because of the character of its membership, it lacks the element of sobriety. There are frequent scenes of indiscipline and disorder. The *Rajya Sabha* has, thus, failed to evolve a distinct role for itself. It has tended to become a pale shadow of the House of People. Though the members of *Rajya Sabha* are very sensitive about their status, yet their role has not been dignified and impressive. Mr. N. C. Chatterjee observed in the *Lok Sabha*, "The Uppor House, which is supposed to be a body of elders, seems to be behaving irresponsibly like a pack of urchins."

SECTION II

THE HOUSE OF THE PEOPLE

(Lok Sabha)

Composition

The House of the People or the *Lok Sabha* is the lower house of Parliament. Under Art. 81 of the Constitution, the maximum strength of this House is fixed at 525. At present it consists of 518 members, excluding those to be nominated by the President. Of these 518 elected members (a) 500 have been directly elected by the people from the territorial constituencies in the 18 States. (b) The remaining 18 representing the 9 Union Territories have

also been directly elected by the people.* The President nominates one member to represent the North-East Frontier Tract. Under Art. 331 of the Constitution, he may also nominate not more than two members of the Anglo-Indian community, if he thinks that the community is not fully represented in the House. Provision has also been made for the reservation of seats for the scheduled castes and scheduled Tribes. At present, they hold as many as 114 seats out of 518 elective seats of the *Lok Sabha*. This reservation is to continue up to 1981.

Qualifications for Membership

To be qualified for election to the House of People, a person (i) must be a citizen of India, (ii) must be not less than 25 years of age, (iii) must possess such other qualifications as may be laid down by Parliament. Some members of the Constituent Assembly including Prof. K.T. Shah and Dr. Rajendra Prasad apprehended a danger from the illiterate candidates coming into the Parliament and wanted the Assembly to lay down some educational qualifications. Dr. Rajendra Prasad argued, "It is anomalous that we should insist upon high qualifications for those, who administer or help in administering law, but none for those, who make it except that they are elected." But, to their dismay, this suggestion of theirs could not be accepted.

Disqualifications of Members

The Constitution also lays down certain disqualifications for membership to Parliament. A person is disqualified for being chosen to fill a seat in Union Parliament, (a) if he holds an office of profit under any Government in India (ii) if he is declared to be of unsound mind, (iii) if he is an undisputed insolvent, (iv) if he is not a citizen of India, (v) if he voluntarily acquired citizenship of a foreign state or is under an acknowledgement of allegiance to a foreign state and, (vi) if he is so disqualified by or under any law made by Parliament.

Election to the House

The election to the House of People is held on the basis of

*States : Andhra Pradesh 41, Assam 14, Bihar 53, Gujrat 24, Haryana 9, Himachal Pradesh 4, Jammu & Kashmir 6, Kerala 19, Madhya Pradesh 37, (Tamil Nadu) Madras 39, Maharashtra 45, Mysore 27, Nagaland 1, Orissa 20, Punjab 13, Rajasthan 23, Utter Pradesh 85, West Bengal 40, Total=500.

Union Territories : Andaman & Nicobar Islands 1, Chandigarh 1, Dadra and Nagar Haveli 1, Delhi 7, Goa, Daman and Diu 2, Laccadive, Minicoy and Admindivi Islands 1, Manipur 2, Pondicherry 1, Tripura 2, Total=18.

universal adult franchise. Every citizen of India of not less than 21 years has the right to be registered as a voter in the general electoral roll maintained for every territorial constituency.* No body can be debarred on grounds of religion, race, caste, sex or any of them. The voting is by secret ballot and the candidate, who receives the highest number of votes is declared elected.

Allotments of Seats and Constituencies

The allotment of seats to each State in the *Lok Sabha* is made in such a manner that the ratio between the numbers of such seats and the population of the State is almost the same for all States. For purposes of election, each State is divided into territorial constituencies in such a manner that ratio between the population of each constituency and the number of seats allotted to it remains practically the same throughout the State. Each parliamentary constituency comprises five or more state assembly constituencies and elects one representative to the *Lok Sabha*.

Life of the House

Normally, the House of People or *Lok Sabha* continues for five years from the date of its first meeting. At the end of this period it stands automatically dissolved and fresh elections are held. The House may be dissolved even earlier by the President. He can also extend its life for one year at a time during a national emergency. It cannot, however, continue beyond a period of 6 months after the emergency ceases to operate.

Officers of the House (Speaker and Deputy Speaker)

✓The *Lok Sabha* elects two of its members as its Speaker and Deputy Speaker respectively. The Speaker is the presiding officer of the House and his office is of great dignity, prestige and authority. He conducts the proceedings of the *Lok Sabha* and maintains perfect order and proper decorum therein. He has very wide powers to check disorder, irrelevance and unparliamentary language and behaviour. Though the Speaker does not cease to be a member of his party, yet he is completely non-partisan in the House. While in office, the Speaker draws a monthly salary of Rs. 2,250 and some other allowances. All these are charged on the Consolidated Fund of India.

The Deputy Speaker is another important officer of the *Lok*

*Provided he or she is not otherwise disqualified on grounds of unsoundness of mind, crime or corrupt or illegal practice.

Sabha. He acts for the Speaker, when the latter's office is vacant. He presides over the sittings of the House in the absence of the Speaker. Normally, he draws a salary of Rs 2,000 per month. But when he occupies the Chair he receives regular salary of the Speaker. He also exercises all the powers of the Speaker. The Constitution confers on the Deputy Speaker some special privileges. By virtue of the office that he holds, he has the right to be present at any meeting of any Committee. If he so chooses he can preside over its deliberations. Whenever he is appointed a member of any Parliamentary Committee, he automatically becomes its chairman. When the Speaker presides over the House, the Deputy Speaker is like an ordinary member of the *Lok Sabha* and has all the rights and obligations of such membership. He ceases to be the Deputy Speaker, when he is not the member of the House of People. 7

Secretary and Secretariat

The *Lok Sabha* has its own Secretariat headed by a Secretary, who is a permanent officer. The Secretary discharges, on behalf of the Speaker, many administrative and executive functions connected with the work of the House. He prepares a full report of the proceedings of the House at each of its sittings and causes it to be published with the Speaker's approval. He has the custody of the records, documents and papers of the House and its Committees. In many ways, the Secretary is like an adviser to the House, its members and Committees. In the discharge of his functions, he is not concerned with the party affiliations of the members of the House.

Committees of the Lok Sabha

The *Lok Sabha* has a number of Committees to facilitate its work. Normally, each of these committees has 15 members on it. They are either appointed or elected by the House or nominated by the Speaker. The most important of such committees are : the Public Accounts Committee, Estimate Committee, Select Committees, Committee on Government Assurances, Committee on Privileges and the Rules Committee. (i) The Public Accounts Committee scrutinizes the expenditure of different departments and then reports to the House how far the public funds have been utilized in accordance with the budgetary provisions. (ii) The Estimate Committee examines the working of the various ministries and suggests measures to ensure economy and improve efficiency.

(iii) Select Committees are set up from time to time to undertake detailed study of some legislative measures. (iv) The Committee on Privileges deals with cases referred to it relating to breach of privileges. (v) The Rules Committee ensures that the rules for the conduct of business of the House work smoothly. (vi) The Committee on Assurances takes steps to see that the promises made by the Ministers are made good in a reasonable time.

SECTION III

POWERS AND FUNCTIONS OF THE PARLIAMENT

India has copied the parliamentary government of the British model, but she has not adopted the parliamentary sovereignty of the British Constitution. Her Parliament does not have unlimited powers like the British Parliament.* Nevertheless, the fathers of the Indian Constitution have made the Union Parliament a sufficiently strong and important organ of the Government. Its powers and functions may briefly be discussed as under :

(a) *Legislative Powers*

The Indian Parliament is empowered to make laws on all matters included in the Union List. It can also legislate on subjects contained in the Concurrent List. Normally, it is not competent to legislate on subjects of the State List. But, if the Council of States declares by a resolution supported by two-thirds of the members present and voting that it is necessary or expedient in the national interests that Parliament should make laws with respect to any matter enumerated in the State List, the Parliament then acquires the power to legislate for a year on that matter for the whole or any part of India. It can also legislate for the State while the Proclamation of emergency is in operation.

The Indian Parliament, as already pointed out, is not a sovereign law-making body. It functions under various restrictions and limitations. It cannot enact a law outside its specified sphere. The laws passed by the Indian Parliament are subject to judicial review. The Supreme Court and High Courts of India can declare a law passed by the Parliament *ultra vires*, if it goes against the provisions of the Constitution. There is another limitation on the powers of the Indian Parliament. Every bill passed by it must receive the President's assent before it is placed on the Statute

*It has been observed by a critic that British Parliament can do anything and everything except making a man a woman and a woman a man.

Book. But this executive veto is suspensory and not final. It can delay the enactment of the bill but cannot kill it. The two Houses of the Parliament can override the President's veto by passing a bill a second time by a simple majority of votes.

Mr. M. N. Kaul, former Secretary to the *Lok Sabha*, holds the opinion that in view of the range and magnitude of the governmental activities in the present day, the Parliament should shift its emphasis from its law-making activity to 'oversight administration'. More time should be spent and more opportunities provided for discussion of public policy and matters of general importance.*

(b) Financial Powers

Power over the purse is an important ingredient of parliamentary authority. Our Parliament also exercises control over the Union purse. It has the power to levy or modify taxes, to vote supplies and grants and to pass appropriation bill. All revenue-raising proposals as well as grants for expenditure are passed by the Parliament. No taxes can be levied and expenditure incurred except under the authority and with the approval of the Parliament. There are, however, certain items of expenditure which may be discussed but not voted in the *Lok Sabha*, as they have been declared by the Constitution a charge on the Consolidated Fund of India. Besides, the annual budget of the Government is presented to the *Lok Sabha*, where it is discussed in detail. Since a yearly budget is insufficient to cover all aspects of the planning execution, a great emphasis is being laid on planning budgets over a number of years at a time.

The Parliament appoints an Estimates Committee and a Public Accounts Committee at the commencement of its first session every year. These Committees help the Parliament in the discharge of its financial functions. The former (Estimate Committee) studies in detail the financial proposals of the Government, while the latter is concerned with the accounts and audit reports on each department.

(c) Constituent Powers

In addition to the legislative and financial powers, the Indian Parliament has also some important constituent powers. Amendments to the Constitution can be initiated only in the Parliament. And excepting the cases mentioned in the *proviso* to Article 368,

*Kaul M. N : *Adoption of Parliamentary Procedure in India : Studies in Social and Political Development* 1947-67.

where ratification of the States is necessary, Parliament alone has the power to amend the Constitution. The State Legislatures in India cannot initiate a proposal for the amendment of the Constitution as is the case in the United States. Some constitutionalist lawyers have expressed concern over the manner in which the Indian Parliament has been exercising its power to amend the Constitution and they feel that the power is being exercised by the Indian Parliament light-heartedly. To quote Pheroze I. Shroff, "The framers of the Constitution have very wisely made the law for the amendment of Constitution in India much stricter than in England. Seeing that the Parliament has amended some of the Fundamental Rights in the Constitution with as much ease and despatch as if they were the bye-laws of a Tramway Company about smoking on the back-seats, it may be urged that some more checks be put on the constituent powers of the Indian Parliament.*

Control over the Executive

The Parliament has got the power to control the Union Executive by putting questions, by adjournment motions, by resolutions of no-confidence and, above all, by its power over the purse. The daily question-hour is a bright spot in the time-table of Parliament. For, it gives an opportunity to the members to probe into the faults of omission and commission in the day-to-day administration of the government†. Prof. W. H. Morris-Jones writes : "Question hour in India has perhaps gained a certain reputation, not undeserved...while the form of the initial question is firmly disciplined, the freedom given to the putting of supplementaries is fairly large and Ministers cannot use escape-routes on too many occasions. Decisions may or may not be affected, but reasons must be given for what is being done.‡\ The real object of an adjournment motion is also to expose the inefficiency or corruption of the administration. The device of resolutions helps to influence and criticise the policies and actions of the Government.

(e) Impeachment and removal of High State Functionaries

Parliament is the highest tribunal of the nation. It has the power to remove the President, Chief Justices and Judges of High

* *The Sunday Standard*, August 9, 1959.

† But the effectiveness of the question hour depends largely on the presiding officer's sympathetic attitude in allowing all members in every section of the House to have an opportunity of taking part in it.

‡ *Marris-Jones, W. H : The Government and Politics of India*, P, 197.

Courts and Supreme Court, Auditor-General, members of the Public Service Commission etc. etc. When the President of India is to be impeached for violation of the Constitution, the charge is to be preferred by either House of Parliament and the other House will investigate the charge or cause it to be investigated. If the House, which investigates the charge, passes a resolution by two-thirds majority of its total membership that the charge preferred against the President has been sustained, the President shall stand removed from the date on which the resolution is passed. A similar procedure is laid down for removing other high functionaries mentioned above. Such a resolution is called 'address'. These functionaries are removed from office by the President on the presentation of 'address' by the Parliament.

(f) Electoral Powers

Parliament has also some important electoral powers. The elected members of both the Houses take part in the election of President of India. The *Rajya Sabha* here enjoys co-equal powers with the *Lok Sabha*. The Vice-President of India is also elected by the members of both the Houses of Parliament assembled at a joint sitting. The Parliament has also a punitive power. It can punish its members or outsiders for breach of its privileges.

(g) Power to form a new State

Our Constitution has vested another important power in the Indian Parliament. Under Art. 3 of the Constitution, it can (a) form a new State by separation of territory from any State or uniting two or more States or parts of States or by uniting any territory to a part of any States, (b) to increase or decrease the area of any State, (c) alter the boundaries of any State, (d) alter the name of any State. This power of the Parliament is often criticised on account of its being completely destructive of the essence of a federal state.

SECTION IV

THE SPEAKER OF THE LOK SABHA

Directing Authority and dignified Office

Every legislative body must have a presiding officer or directing authority to supervise and conduct its deliberations. This officer of *Lok Sabha* is known as speaker. His office is one of great dignity and power. To the world he represents the diity,ng

sovereignty and unity of the House, and within the *Lok Sabha* he ensures that debate is productive and dignified. While unveiling the portrait of V. J. Patel in March, 1948 Pandit Jawaharlal Nehru said, "The Speaker represents the House. He represents the dignity of the House and, because the House represents the nation, in a particular way the Speaker becomes symbol of nation's liberty and freedom."* On another occasion Pandit Nehru referred to the Speaker as the custodian not only of the dignity of the House but also of the sovereignty of the people of India. The Speaker is, no doubt, one of the highest officers of the Indian Republic, and he is placed along with the Chief Justice of India in Order of Precedence.

Election and Tenure

The Speaker is elected by the *Lok Sabha* from amongst its own members either after every general election or when the office falls vacant during the life of the *Lok Sabha*. He continues in office until a new speaker is elected by the new House. The Speaker does not vacate his office even when the House is dissolved. He may, of course, resign his office at any time. He can also be removed from his office by a resolution adopted by the House by an absolute majority of all members on the roll of the *Lok Sabha*.

Salary, allowances, etc.

The salary and allowances of the Speaker are determined by the Parliament, and these are charged on the Consolidated Fund of India. This has been provided to make his office impartial and independent. At present, the Speaker receives a salary of Rs. 2,250 per month. He is also entitled to free furnished residence, free medical facilities and a sumptuary allowance of Rs 500 per month.

Impartial, though Partyman

The office of the Indian Speaker is modelled on that of the Speaker of the House of Commons in England. Many of the conventions associated with the British Speaker have also been adopted in India. Despite this, there remains one distinct difference between the Indian Speaker and his counterpart in England. Although originally elected to the House as a party-man, the British Speaker severs all party-links from the day of his election to this exalted office. He goes into political exile from the

**The Journal of Parliamentary Information*. VIII (1962) P, 4

moment he occupies the chair. He avoids even personal contacts, which might give grounds for suspicion of partiality. But the Indian Speaker, on the contrary, does not cease to be a party-man. He maintains his political affiliations outside the House. He continues to bear his party label. In the words of Mr. G.V. Mavalankar, the first Speaker of the Union Parliament, "The Indian Speaker does not cease to be politician merely by the fact of his being a Speaker". It has been repeatedly emphasised in the Speakers' Conference that the British Speaker's complete divorce from politics is a healthy convention. The Indian Speaker should also be removed completely from the arena of party politics. But no concrete step has yet been taken to adopt this British convention.

In spite of their being party men, the Indian speakers have always been impartial in the discharge of their functions. Mr. Mavalankar, though a faithful Congressman, never acted as a tool of the Government. He made his position one of substantial independence. Speaking in the *Lok Sabha*, he once observed : "Though a Congressman it would be my duty and effort to deal with all members and sections of the House with justice and equality, and it would be my first duty to be impartial and remain above all considerations of party or of political career.* It is said that in the House he was stern and conducted the proceedings with almost forbidding firmness. His successors Mr. Ayyanger and S. Hukam Singh have also upheld the dignity of the office. All of them have been conscientiously following the principle of 'Judicious impartiality'.

To maintain his impartiality, the Indian Speaker, like his British counterpart, speaks very rarely. He does not express his views on matters discussed in the House, nor does he embroil himself in debates. He speaks only to interpret the rules of the House or to give decision on points of dispute.

Need for more reverence for the office

It is often observed that the office of the Indian Speaker does not command the much needed reverence of the members of the *Lok Sabha*. For, some members lack political maturity and sense of responsibility, which is essential for the success of parliamentary institutions. On many occasions, the authority of the Speaker

*S. S. More, *Practice and Procedure of Indian Parliament* P. 86.

**Lok Sabha Debates* Vol. 3 (1952) P. 4

has been flagrantly defied. For instance, in April, 1960, the Speaker had to order for the removal of a socialist member (Arjan Singh) for his misbehaviour towards the chair. Similarly, in 1962, two other socialist members were awarded suitable punishment for their flouting the authority of the Speaker. The well wishers of the parliamentary democracy in India are not happy over such developments. The situation in the States is all the more annoying. It is, however, felt that the situation can improve, if the Indian Speaker, like his British counterpart, severs all his connections with his party and discards party-label.

HIS FUNCTIONS AND POWERS

As Presiding Officer

(The Speaker of the *Lok Sabha* performs a variety of functions. He also exercises wide powers drawn from the Constitution and the Rules of Procedure of the House. (As a presiding officer of the *Lok Sabha*, he occupies the chair, when the House is in session. He determines, in consultation with the leader of the House, the order of business, the time to be allotted to the debates on the address of the President, the estimate, the finance and appropriation bills. He fixes the day for Private Members' Bills and resolutions.) He adjourns the House or suspends its meeting, if there is no quorum. (He maintains perfect order and proper decorum in the House and has wide powers to check disorder, irrelevance and unparliamentary language and behaviour. If a member does not obey his order, he can ask him to withdraw from the House or he can suspend him from attending the House for the remainder of the session.) The Speaker also interprets the rules of the House, puts questions and announces the results of voting. He decides all points of order and gives rulings, which are final. He himself does not vote except in the case of a tie. (In short, his authority, in the words of G. V. Mavalankar, "is supreme in the House."

As 'Lord of the Debate'

As 'Lord of the Debate', his chief function is to conduct the debates in a judicious manner. He must see that debates centre around the main issue. He must also fix time-limit for speeches. In case the time allotted to a particular speaker is found to be insufficient, the Speaker can increase it suitably so that proper and full debate takes place. Again, if the Speaker is of the opinion

that the word or words used in the debate are defamatory or indecent or unparliamentary, he can, in his discretion, order that such a word or words be expunged from the proceedings of the House. The Speaker is also empowered to allow any member to speak in his mother tongue, if he cannot adequately express himself in Hindi or English. It is also one of his functions to select amendments to a bill or resolution to be discussed by the House. He is the final authority to decide whether a bill is money bill or not.

As a Mediator

It is a peculiar feature of the Indian parliamentary system that the Speaker has to perform, from time to time, the mediatory role of bringing about a compromise between the Government and the Opposition. This role of his appears sufficiently marked in the Business Advisory Committee, which fixes in advance the time needed for each item of business. (It comprises all sections of opinion in the House. In his effort to see that all decisions of the Committee are taken unanimously, the Speaker has to act as a mediator. It is a new responsibility imposed upon the Indian Speaker, but he has discharged it very efficiently and fairly. Besides, the Speaker is a channel of communication between the two Houses of the Parliament and also between the *Lok Sabha* and the President.

As Spokesman of the House

The Speaker is the principal spokesman of the House. He is the 'voice' of the *Lok Sabha*. All messages on behalf of the *Lok Sabha* and to the *Lok Sabha* are sent or received with his authority. All petitions and appeals are also addressed to the Speaker. Besides, it is through him that all orders of the *Lok Sabha* are executed. Every bill passed by the *Lok Sabha* must be authenticated by his signature before it is sent to the *Rajya Sabha* for its consideration or to the President for his assent.

Role with regard to Parliamentary Committees

The Speaker of the *Lok Sabha* has enormous powers with regard to the constitution and working of the Parliamentary Committees. He appoints the members of the Committees of the House and the chairmen of all Committees except those of which he himself is an *ex-officio* Chairman.* He gives the members of the

*He is the chairman of such important Committees as Business Advisory Committee, Rules Committee and the General Purposes Committee.

Opposition a fair chance to become chairmen of such Committees. The Parliamentary Committees work under the over-all control of the Speaker, are staffed by the Secretariat provided by him and conform to the established procedure and directions of the Speaker. Being the supreme head of all Parliamentary Committees, the Speaker guides their work. He reads their reports to keep himself in touch with the work of the various committees. All difficult and important matters are referred to him for guidance and advice. He has the power to give them such directions as he may consider necessary.

His Administrative Functions

The Speaker has also to perform some important administrative functions. The Secretariat staff of the *Lok Sabha* works directly under him. He also controls the premises of the House and has an undisputed authority both within and without it. All visitors and press correspondents, who are admitted to the galleries, are subject to the discipline and order of the Speaker. In the event of any breach of his order, he has the power to award any of such punishments as : stoppage of admission for a definite or indefinite period, committing of offenders to prison, etc. etc. But be it noted that Speaker is not a policeman of the House. He is essentially its leader and guide. He helps and guides the new-comers to the *Lok Sabha* in more than one way.

To sum up, the Speaker of the *Lok Sabha* is 'one of the highest officers of the State' on whom depends the dignity of the House, its efficient working and the protection of the rights of the minorities and the individual members.

SECTION V

LEGISLATIVE PROCEDURE

IN

THE INDIAN PARLIAMENT

The Parliament has to discharge various functions, but its main function is to make laws for the country. And of the two Houses of the Union Parliament, the *Lok Sabha* has the overwhelmingly greater power of legislation. The legislative procedure is of course, identical in the two Houses and bills have to pass through the same stages in each House.

The Kinds of Bills

There are two types of bills : Public Bills and Private Bills. Public Bills relate to matters affecting the public as a whole e.g., crime, road safety, the nationalisation of industry etc. The private bills are the bills for a particular interest or benefit of any person or persons. In England, a Private Bill is passed by a special procedure, which is distinct from that prescribed for a Public Bill. Our Constitution makes no such distinction. Distinction is, sometimes, drawn between bills introduced by private members and those sponsored on behalf of the Government. This distinction is important from the point of view of the successful passage of a bill through Parliament, but it has no bearing upon the procedure. A bill introduced by a private member has not much chance of being placed on the Statute Book unless it is backed by the Government benches.

Though every member of the Parliament has the right to introduce bills in the chamber to which he belongs, yet private members do not exercise this right to any great extent. A very large part of the bills coming up before Parliament are Government measures. Much of the time of Parliament is devoted to their consideration.

Classification of Bills (Money Bills and Non-Money Bills)

The public bills are classified into Money Bills or Non-Money bills or Ordinary bills. A money bill is concerned with taxation and other money matters, such as borrowing of money, the custody of the Consolidated Fund etc. Our Constitution provides for a special procedure in regard to a money bill in order to establish the supremacy of the *Lok Sabha* in financial matters.

LEGISLATIVE PROCEDURE IN REGARD TO ORDINARY BILLS

Arts. 107 to 122 of the Constitution deal with the legislative procedure with reference to the passing of the bills by Parliament. As provided therein, every bill has to pass through the following stages before it is placed on the Statute Book.

Introduction and First Reading

The first stage of the legislative process is the introduction and first reading of a bill. A bill, other than a money bill, may be introduced in either House of Parliament by any member. A

member, who wishes to introduce a bill, must give one month's notice of his intention to introduce the bill. The notice is accompanied by a copy of the Bill and the 'Statement of Objects and Reasons.' If the Bill has some financial aspect, a Financial Memorandum is also attached with the Bill. This Memorandum shows the recurring and non-recurring expenditure and the sanction or recommendation of the President, if it is necessary under the Constitution. After this, the person, who wishes to introduce the Bill, may be a minister or a private member, seeks the permission of the House. The request is generally granted. The member-in-charge of the Bill then introduces it by reading its title and explaining its main provisions and the need for it in a speech. This is followed by printing of the Bill in the *Gazette of India*. On request the Speaker may order the publication of a bill. In such a case there is no need of seeking the permission of the House. *The introduction of the Bill and its publication in the official gazette constitute the First Reading of the Bill.*

Second Reading

After the Bill has been introduced, there are four alternative courses of action open to the House at this stage :

(a) *the Bill may be taken into consideration at once.* This course is adopted very rarely and only in case of an urgent and non-controversial measure,

(b) *the Bill may be referred to a Select Committee of the House,*

(c) *the Bill may be referred to a Joint Committee of the Houses,*

(d) *the Bill may be circulated for the purpose of eliciting public opinion on it.* This is done in case of such legislative measures, as are likely to arouse controversy and agitate public opinion. Reference to a Select Committee is the normal procedure.

(a) Reference to a Committee

When it is moved that the Bill be referred to the Select Committee, the mover of the Bill proposes the names of the members of the Committee, and the House adopts them. The members of the Select Committee are selected generally on the basis of their ability or expert knowledge of the subject. The Speaker appoints the Chairman of the Committee from amongst its members. When Deputy Speaker is one of the members of the

Committee, he automatically becomes its Chairman. If it is moved that the Bill be referred to a Joint Committee, the member-in-charge indicates the number and names of the members constituting the Committee from the one House as also the number and names of the members from the other House. Of the total number of members on the Joint Committee two-thirds belong to the *Lok Sabha*.

The Committee examines the Bill thoroughly and in detail clause by clause. It can amend its provisions, even radically, wherever necessary. It can summon any person to appear and give evidence and produce any paper or document relevant to the issues involved in the Bill. It may also hear experts or the representatives of special interests likely to be affected by the proposed measure. In short, the function of the Committee is 'to see that the provisions of the Bill bring out the intention behind the principles clearly, that there is no procedural defect in its working, that it does not offend provisions of the existing law and that the object proposed to be achieved is adequately brought out.'

(b) Report of the Committee

After the clauses have been examined and discussed, the Chairman of the Committee presents its report to the House. The member-in-charge of the Bill then moves that the Bill as reported by the Select Committee may now be taken up for consideration. If the House agrees to consider the Bill as reported by the Select Committee, it enters into the second stage of the second reading, when it is discussed clause by clause. Each clause is taken up by the House and amendments are moved, discussed and disposed of. This is the stage, when the Bill undergoes substantial changes, should they be found necessary. It is also the most time-consuming stage. Once, the clause-by-clause consideration is over and every clause is voted, the second reading of the Bill is over.

Third Reading

The Bill is finally taken up for the third reading. It is more or less a formal affair. The debate is confined to the acceptance or rejection of the Bill. No amendments are allowed except of a verbal nature designed to remove ambiguities. After it has been accepted by the House, it is transmitted to the other House, where it has to pass through the same process; first reading, committee stage, second reading and the third reading. This House has three alternatives before it. It might finally pass the Bill as sent by the

originating House. It might amend or altogether reject the Bill. In both these latter cases the Bill is returned to the originating House. If the originating House agrees to the amendments proposed by the other House, the Bill is deemed to have been passed by both. If the originating House is unable to agree to the amendments, the Bill is sent back to the other House with a message to that effect. If this House continues to insist, the result is a deadlock, which can be resolved by means of a joint sitting of the two Houses. Since decision in the joint sitting is taken by a majority of votes, *Lok Sabha* stands in an advantageous position on account of its larger numerical strength.

Assent to the Bill

After the Bill has completed its journey in both the Houses and has been approved by them, it is presented to the President for his assent. If the President gives his assent, the Bill becomes an Act and is placed on the Statute Book. In case the President means to withhold his assent, he may send the Bill back to Parliament for reconsideration and suggest the lines on which it may be amended. If the Bill is passed by both the Houses again, with or without amendments, it is sent to the President for the second time. At this stage, the President cannot withhold his assent.

Procedure in regard to Money Bills

Our Constitution provides for a special procedure in regard to Money Bills. This has been done to establish the supremacy of the House of People in financial matters. A Money Bill cannot originate in the Council of States. It is introduced in the House of People on the recommendation of the President. When it is passed by this House it is sent to the Council of States, which has the power only to make recommendations with regard to the Bill within fourteen days. It cannot amend or reject the Bill. In case the Council fails to offer its recommendations within the specified period, the Bill is supposed to have been passed by it in the form it emerged from the lower House. The House of People is not bound to accept the recommendations of the Council of States nor is the Bill sent to it a second time, nor is there any room for calling a joint sitting of the two Houses. Thus, the final word lies with the House of People; the Council of States has no power over financial matters. The President cannot return a Money Bill for reconsideration.

A Money Bill, as defined by Article 110, is one which contains

provisions dealing with all or any of the following matters : (i) the imposition, abolition, remission, alteration or regulation of any tax; (ii) the regulation of the borrowing of money or creation of any financial obligation to be undertaken by the Government of India ; (iii) payment of money into or withdrawal of money from the Consolidated Fund or the Contingency Fund of India ; (iv) appropriation of money out of the Consolidated Fund ; (v) receipt of money on account of the public account of India and the audit of accounts and incidental matters.

However, if a Bill provides for the imposition of fines or other pecuniary penalties or for the demand of payment of fees for licences or fees for services rendered or if it provides for imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes, such a Bill should not be deemed a Money Bill. If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of People is final. On every Money Bill, which is transferred to the Council of States or presented to the President for his assent, there is an endorsement by the Speaker of *Lok Sabha* that it is a Money Bill.

FINANCIAL PROCEDURE

(Budget or Annual Financial Statement)

The Budget

The Annual Financial Statement or the Budget of the estimated receipts and expenditure of the Government of India for the ensuing year is the most important financial document. It is the duty of the President to get it prepared and placed before the Houses of the Parliament. The Budget in India is presented to the Parliament in two parts—the Railway Budget and the General Budget. The former deals exclusively with the income and expenditure relating to Railways, and is separately presented by the Minister for Railways. The General Budget deals with all departments of the Government of India excluding Railways and is presented by the Finance Minister. The procedure in regard to these two types of Budgets is, however, the same.

The General Budget consists of two parts—one dealing with the expenditure and the other with the income side of the Union finances. The expenditure embodied in the Budget is divided into two separate parts : (a) the expenditure charged upon the Consolidated Fund of India, which is non-votable ; (b) the sums required

to meet other expenditures from the Consolidated Fund which are votable. The following items belong to the charged expenditure : (1) the salary and allowances of the President ; (2) the salaries and allowances of the presiding officers of the Houses of Parliament *i.e.* the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of People ; (3) debt charges of the Government of India ; () the salaries and allowances of the judges of the Supreme Court and High Courts, the Comptroller and Auditor-General and pension payable to retired judges of the Supreme Court ; (5) sums required to satisfy any court decree or award and any other expenditure declared by the Constitution or by Parliament to be so charged.

The Constitution charges the expenses of the Union Public-Service Commission on the Consolidated Fund of India. The Parliament may add more items to this list. Though all these items are non-votable, yet the right of the Parliament to discuss the items is not affected. This provision is made with a view to keep the expenditure with respect to important items above the vote in the legislature. The provision in respect of the salary of the Supreme Court judges is particularly laudable in so far as it would enable the judges to maintain their independence from the Executive.

With respect to the second part of the expenditure, estimates are to be submitted to the House of People in the form of demands for grants. The House has the power to assent to, reduce or reject these demands. Demands can be made only on the recommendations of the President.

Financial Legislation—its Various Stages

The Budget has to pass through five stages, viz., (1) Introduction or presentation ; (2) general discussion ; (3) voting of demands ; (4) consideration and passing of the Appropriation Bill ; and (5) consideration and passing of the taxation proposals embodied in the Finance Bill.

(a) Introduction of the Budget

Under Article 112 of the Constitution, the President has the duty to get the Budget prepared and placed before both the Houses of Parliament. He gets it done through the Finance Minister, who is the custodian of the nation's finance. Hence, the Finance Minister introduces the Budget showing the estimated receipts and

expenditure for the financial year in the House of People. According to the custom, it is presented on the last day of February in order that Parliament may have sufficient time to discuss the proposals in general and authorise appropriation before the beginning of the new financial year on the first day of April. The introduction of the Budget is an important event, because it unfolds the financial and economic policy of the Government for the ensuing year. On the day the Budget is introduced, there is no discussion on it. Only its copies together with the Financial Statement are distributed among the members of the Parliament.

(b) General discussion on the Budget

About three days after the introduction of the Budget, there is a general discussion on the Budget in either House and three to four days are devoted to this task. During the general discussion, the financial policy of the Government is subjected to criticism. The accent is on general problems connected with the nation's finances and the principles involved in the Budget proposals. No discussion of details or cut motions is in order at this stage.

(c) Demands of Grants

After the general discussion is over, the House of People takes up the consideration of various demands for grants. The House has the power to refuse a grant, to reduce it or accept it, but it cannot increase it. Every demand for a grant is made only with the recommendation of the President. Besides, under the rules of procedure, ordinarily a separate demand has to be made in respect of the grant proposed for each Ministry and each demand contains not only a statement of the total grant proposed, but also a detailed estimate under each demand for grants divided into items.

(d) Appropriation Bill

After the House has finished the consideration of various demands for grants, an Appropriation Bill is prepared. It is based on the decisions taken by the House. It has to go through three readings like any other bill, but no amendments are allowed if they seek to vary or alter the destination of any grant or to reduce the expenditure charged upon the Consolidated Fund: there is no reference to a Select Committee. The purpose of this Bill is to provide legal sanction for the appropriation of sums upon the Consolidated Fund. After it has been passed by the House, it is certified by the Speaker as a Money Bill and transmitted to the Council of

States for recommendations. The House may accept or reject the recommendations of the Council. It is then presented to the President in the form in which it is finally passed by the House. It receives the assent of the President who cannot return it for reconsideration. The Appropriation Act embodies the authority given by the House with the assent of the President to Government to spend money as authorised in the Act. Without such an authority the Government cannot incur any expenditure.

(e) *Finance Bill*

After the House has voted supplies to the Government, it takes up the consideration of the Government proposals for raising necessary revenues for meeting the expenditure. It can assent to or refuse to assent to any of the taxation proposals or reduce the amount of any tax as recommended by the President, but it cannot increase any tax nor prepare a new one. On the basis of the decisions taken in the House, the Finance Bill is prepared and introduced in the House of People. It has to go through three readings, but no amendments proposing any changes in the rates of taxes are permitted at any stage. As soon as it is passed by the House, it is certified by the Speaker as a Money Bill and is sent to the Council of State for its recommendations. The Council must make its recommendations within fourteen days. The Lower House may or may not accept the recommendations. The Bill as finally passed by the Lower House is presented to the President for his assent. The President cannot return it for reconsideration and gives his assent.

SECTION VI

PARLIAMENTARY COMMITTEES

Importance of Parliamentary Committees

Parliament is too unwieldy a body to deliberate effectively on the problems, which come before it. It has very limited time at its disposal. It also does not possess the expert knowledge necessary for a competent and detailed examination of the legislative measures. So, it works through various committees known as Parliamentary Committees. These committees have the obvious advantage of saving floor-time and rescuing the House from detail. They help to make the legislative work of the Parliament smooth and expeditious. They are indispensable also for an effective control of Parliament over the Executive. It was stated by Mr. M. N. Kaul that....unless there are

committees, which discuss details...Parliament's control is bound to become feeble. On account of the pressure of circumstances and growing range of state business, the importance of the committees has all the more increased and they have been recognised in the rules of procedure of all parliaments. While pointing out the importance of the Parliamentary Committees, Prof. W. H. Morris-Jones writes : "A legislature is known by the Committees it keeps." To sum up, the Parliamentary Committees are integral part of the apparatus of a modern legislature and they have a special importance in any scheme of control by Parliament over the Executive. But, as has been experienced in the working of the parliamentary government, these Committees have made the division of labour and the principle underlying specialisation as a pretext for taking to themselves powers, which properly belong to the House.

COMMITTEES OF THE UNION PARLIAMENT

(Their Composition and Organisation)

The Indian Parliament's first decade was guided by Mr. G.V. Mavalankar as Speaker of the *Lok Sabha*. Though he was a faithful Congressman, yet he was not a tool of the Government. He built up his own Parliament staff and established the privileges of the House. He also created a wholesome system of Parliamentary Committees to function as watch-dogs over the conduct of administration. The objects of these committees, as explained by Mr. Mavalankar, in April 1950, are as under :—

- (a) To associate with and train as large a number of members as possible, not only in the ways in which the administration is carried on, but also to make them conversant with the various problems that Governments have to meet from day to day ;
- (b) To exercise control on the Executive so that they do not become oppressive or arbitrary ;
- (c) To influence the policies of Government ; and
- (d) To act as liaison between Government and the general public.

The Parliamentary Committees deal with various subjects. They can, therefore, be termed as : General Committees, Legislative Committees, Financial Committees etc.

(A) GENERAL COMMITTEES

(1) *The Business Advisory Committee*

This Committee comprises all sections of opinion in the House including the members of the Opposition. It has 15 members in all and is presided over by the Speaker. It fixes in advance the time needed for each item of business, which has to come before the House. It also allocates time between the Government party and the opposition parties. The recommendations made by this Committee are generally approved by the House. The allocation of time helps not only the party in power but also the Opposition. It enables the Opposition to select its speakers on the various measures before the House and to utilize fully the time available to it to express its views. Shri M.N. Kaul, former Secretary to the *Lok Sabha*, writes, "This system has worked very well in India and has enabled both the Government and the Opposition to plan time in advance so that there is no uncertainty as to how much work can be put through during the time available and how that time can be utilized by the opposition parties as well as by the government party."* This Committee meets three or four times a year.

(2) *The Rules Committee*

This Committee of the *Lok Sabha* also consists of 15 members. They are all appointed by the Speaker, who is the *ex-officio* Chairman of this Committee. The main business of this Committee is to ensure that the rules for the conduct of the business of the House work smoothly. It has the power to suggest amendments to the rules, if necessary.

(3) *Committee on Government Assurances*

In the Indian Parliament there is an omnibus committee, called the Committee on Government Assurances. It, too, has 15 members. It is a unique institution developed in India. In the words of W.H. Morris-Jones, "This Committee is a wholly Indian invention." This Committee lists every promise or undertaking given by the Ministers on the floor of the House and then takes steps to ensure that these assurances are fulfilled within a reasonable time. This Committee has done useful work during the last years. But for its efforts a number of ministerial assurances given on the floor of the House during debates or other proceedings in the House would have remained buried in the records of Parliament.

*Kaul M.N. : '*Adoption of Parliamentary Procedure.*'

(4) *Committee on Petitions*

It is an important duty of the State to provide an appropriate machinery to give redress to the people, who have grievances against the administration. No doubt, there are courts of law, which give rulings to the citizens, when law goes not-obeyed, but there are grievances which fall in the administrative domain of the Executive and cannot be questioned or taken up in the courts of law. It is in the field of these grievances of the citizens against the Government that a machinery in the form of Committee of Petitions has been devised. This Committee is set up at the commencement of the *Lok Sabha* and has 15 members on it. No Minister can be a member of this Committee. It deals with petitions submitted to the *Lok Sabha* by individuals or organizations seeking redress of grievances. It examines every petition and calls for papers and records, summons witnesses and makes reports. It also suggests remedial measures. It has been suggested by the constitutional experts that this Committee should have the power to hear both the complaining person and the departmental authority against whom the complaint has been made. And after having heard both sides, it should make a report on the nature of the grievance, and also on how far it has been remedied. A parliamentary committee, which has such powers and which is independent of the Executive, would prove more effective and useful.

(5) *Committee of Privileges*

This Committee consists of 15 members nominated by the Speaker at the commencement of the House. It is presided over by the Deputy Chairman House. It deals with cases referred to it relating to breach of privileges. A question of privileges arises, when (a) a member makes a derogatory remarks against another, or (b) there is some published matter casting reflection on the dignity and prestige of the House. The matter is, then, referred to the Privilege Committee, which goes into the matter and submits its report to the House. On the receipt of the report, the House decides about the appropriate action. Thus, the Committee on the one hand defends the prestige and dignity of the House, while, on the other hand, it checks a hasty action by the Government.

(B) FINANCIAL COMMITTEES

Finance has two special committees, namely, the Estimate Committee and the Public Accounts Committee.

(1) *The Estimate Committee*

The Estimate Committee was created in India in 1950. It studies in detail the financial proposals of the Government and examines the working of the various ministries. It also suggests measures to ensure economy and improve efficiency. According to Moris-Jones, "This Committee has gone far to justify the parliamentary joy and the official hostility which attended its establishment. Its (*Lok Sabha's*) thirty members are charged with the examination of departmental estimates." Since the members of this Committee do not have any audit report to base their work and a perusal of the bare estimates is of not much use, they are, therefore, empowered to call upon the ministries to furnish material in support of their estimates. Their work in the past twenty years has been greatly appreciated, and precisely for two reasons : First, they have not hesitated to recommend in the name of efficiency large administrative reforms. Secondly, they have given an ample proof of their growing competence and effectiveness as a control over the ministries. Their influence on the Government is now recognised.

(2) *The Public Accounts Committee*

This Committee comprises 22 members—15 from the *Lok Sabha* and 7 from the *Rajya Sabha*. The two chambers select their respective members for one year. No Minister can become a member of this Committee. This Committee was created for the first time in 1923, but it became a real parliamentary committee in 1950. It is often described as the twin-sister of the Estimate Committee". It scrutinizes the expenditure of the different departments of the Government and then reports to the House how far public funds have been utilized in accordance with the budgetary provisions. It studies in detail all relevant accounts and reports on each department. According to Moris-Jones, "Expertise has been acquired and enthusiasm has developed among both the members and Parliament secretariat staff, who service the Committee."

It is true that the scrutiny of this Committee is in the nature of a *post mortum* examination of the expenditure already incurred, yet it is not without value. For, the Government has continuously to act in the knowledge that scrutiny of any item may take place and the waste or impropriety may be widely exposed in the House and the Press. The Committee is considerably assisted in his work by the Auditor-General, who attends its meetings.

(C) LEGISLATIVE COMMITTEES

(1) *The Committee on Private Members' Bills and Resolutions*

This Committee was constituted for the first time in 1953. Its all the 15 members are nominated by the Speaker for a period of one year. It is presided over by the Deputy Speaker. It examines the bills submitted to it by the *Lok Sabha* and then divides them into important or less important, urgent or less urgent ones. It also recommends the time to be allotted for their discussion by the House.

(2) *The Committee on Subordinate Legislation*

This Committee, like many other Committees of the House, consists of 15 members. All of them are nominated by the Speaker. No Minister can become a member of this Committee. Its main function is to ascertain that the rules and regulations formed by the Executive are (a) in accordance with the provisions of the Constitution : (b) no bar to the jurisdiction of the Courts ; (c) not concerned with expenditure from the Consolidated Fund of India.

(3) *Select Committees on Bills*

The Select Committees on Bills also form a part of the Legislative Committees. They are appointed by the House from time to time for detailed examination of bills. They are, therefore, *ad hoc* Committees with a specific assignment. The strength of such Committees is not fixed. It varies from committee to committee. Normally, its membership varies between 20 and 30. In 1952, the *Lok Sabha* appointed a Select Committee (the Select Committee on the Estate Duty Bill) with 35 members on it. Its Chairman is generally a member of the ruling party and he is appointed by the Speaker.

(D) COMMITTEE ON PUBLIC UNDERTAKINGS

In view of the rapid growth in the industrial enterprises of the government, the *Lok Sabha* in 1964 instituted a new parliamentary Committee viz. Committee on Public Undertakings. This Committee of ten members is elected by the House in accordance with the principle of proportional representation by means of single transferable vote. The chairman of this Committee is nominated by the Speaker from amongst its members. No Minister can become a member of this Committee. Of course, five members of the

Rajya Sabha elected by that House in the manner prescribed for the members of the *Lok Sabha* also work on this Committee as 'associate members'. The main functions of this Committees are to examine the reports and accounts concerning the public undertakings, as also of the Comptroller and Auditor-General related to public undertakings. This Committee has, of course, nothing to do with the day-to-day administration of public undertakings.

SECTION VII

DELEGATED LEGISLATION AND OTHER DILEMMAS OF PARLIAMENTARY DEMOCRACY

(i) *Delegated Legislation*

The volume of legislation necessary to meet the needs of a modern state has sufficiently increased, while the subject-matter of modern legislation, especially social and economic legislation, has become too complex and complicated. Under the circumstances it has become difficult for a parliament to deal with all aspects of law-making, though it is theoretically its exclusive privilege. Hence, the Parliament of India, like its counterparts in England and many other countries, has been obliged to legislate only in broad outlines, leaving the Ministers to fill in the details by laying down regulations. By doing this, Parliament has in effect conferred law-making powers on Ministers and the civil servants advising them. Through this delegated legislation or subordinate legislation, the Government makes inroads into the legislative powers of Parliament.

This delegated legislation is, no doubt, unavoidable but it does involve great risk to the citizens. For, the administrative officers concerned with the framing of the rules may exalt administrative convenience and the national advantage at the expense of the individual and his freedom. As a safeguard against the abuse of power, it is suggested that the Parliament should (i) examine the rules and regulations framed by the Executive, (ii) lay down special procedure for rule-making, (iii) define the limits of delegated legislation.

(ii) *Dictatorship of the Cabinet*

As in England so also in India, the Cabinet is becoming the master of Parliament. It meets only, when the Government wants it to meet, at time and dates fixed by the Government. Parliament

has no control over the time or duration of its meetings. The Ministers do not show the due consideration to Parliament. Their attendance in Parliament is simply disappointing. Usually, one or two Ministers are present, when bills or resolutions are debated. Even at Budget time it is only the Finance Minister or his deputy who is present. It was pointed out by Mr. Ruthnaswamy, a member of the *Rajya Sabha*, that with a total of more than fifty Ministers, it should not be difficult for half a dozen Ministers to be present at each sitting of each House according to the subject under discussion.

(iii) *Domination of Party in Parliamentary Politics*

Another disappointing feature of the system is that the members of the ruling party, including its leaders, attach more importance to party than to Parliament. Party takes precedence over Parliament in thought and conduct of Ministers. Pronouncements on policy are made in party meetings or press conferences, before they are made in Parliament. Members in the Parliament speak and vote as if they were delegates of the party and not free representatives of their constituencies or of the country as a whole.

(iv) *Lack of Consideration for the Opposition*

It is, indeed, unfortunate that opposition parties, however patriotic and national they may be, are not treated with the consideration shown to them in other free countries like England and the U.S.A. They are not taken into confidence nor consulted on great critical occasions or important shifts in international politics or in financial crisis.

(v) *Precedence of Government business over Private business*

Another disheartening feature of the Indian system is that Government business takes precedence over every private business. Private members get little or no assistance from government departments in regard to the preparation and drafting of private bills, as a matter of right.

FURTHER READING

1. *Michael Ameller* : *Parliaments*
2. *M.N. Kaul* : "Adaptations of Parliamentary Procedure to meet present day Needs." (Article contributed in *India : Studies in Social and*

Political Development). (1847—67).

3. *M. Ruthnaswamy* : The Dilemma in Indian Democracy in Parliament (Article contributed in Dilemmas of Democratic Politics in India)
4. *S.S. More* : Practice and Procedure of Indian Parliament.
5. *W.H. Morris-Jones* (i) The Government and Politics of India.
(ii) Parliament in India.
6. *Norman D. Palmer* : The Indian Political System.
7. *Lok Sabha Debates* : Vol. I
8. *Journal of Parliamentary Information* : Vol. VII (1966)
9. *G.V. Mavalankar* : "The Office of the Speaker" : The Journal of Parliamentary Information III (1956)
10. *S.L. Shekdhar* : "Officers of Parliament" in The Indian Parliament.

CHAPTER 29

The Government of The Union

(THE SUPREME COURT)

✓The Supreme Court established under the Indian Constitution (Arts. 124-151) is the highest judicial authority in the country. It stands at the apex of our judicial system which is an integrated one. It is said to be more powerful than any other Supreme Court in the world. It is the highest appellate tribunal for the whole Union, in matters constitutional, criminal and civil. It is also the protector of the Fundamental Rights and a tribunal for the final determination of disputes between the Union and the States. It plays, in addition, a unique role by giving its advice, from time to time, to the President of India on questions of law. Thus, the Supreme Court of India occupies a very important place in our constitutional set-up and on it depends the future evolution of the Indian Constitution.

COMPOSITION OF THE SUPREME COURT

Strength of the Judges

The Supreme Court of India was inaugurated with our new Constitution in 1950.* It then consisted of a Chief Justice and

*Under the Government of India Act, 1935, a Federal Court had been set up in India. It was raised to the status of the Supreme Court in 1950.

seven associate judges. A parliamentary enactment of 1957 increased the strength of the judges to eleven. To cope with the fast-growing volume of work, their number was further increased in 1960. At present, the Supreme Court consists of a Chief Justice and thirteen other judges. In U.S.A., where there is no provision for a division bench, all judges of the Supreme Court are entitled to sit for hearing a case. But in India, a bench of three judges generally hears the civil and criminal appeals. The minimum number of judges, who constitute a bench to hear a case involving question of constitutional law, is five. But often even more than five judges sit to hear such cases.

Appointment of the Judges

The Judges of the Supreme Court, including the Chief Justice, are appointed by the President of India. But he is not completely free in making these appointments. While making the appointment of the Chief Justice of India, the President acts after consultation with such judges of the Supreme Court and High Courts as he may deem necessary.* For appointing other judges of the Supreme Court, the President must also consult the Chief Justice of India. This provision, obviously, does not bind the President to follow the recommendations of the persons consulted for any of these appointments. It, thus, leaves an ample scope for the Executive to make appointments at its discretion. But the experience of past twenty years reveals that the recommendations of the Chief Justice with regard to the appointments of Supreme Court Judges are accepted as a matter of convention. The political appointments, if any, are, therefore, negligible.

The Constitution provides for the appointment of *ad hoc* judges. If at any time the session of the Supreme Court cannot be held or continued for want of a quorum (due to the illness of a judge or for some other reasons), the Chief Justice, with the

*A convention has grown during the last twenty years that the senior-most judge of the Supreme Court generally succeeds the retiring Chief Justice of India. On the eve of the appointment of Justice J.C. Shah as Chief Justice in December, 1970, fears were expressed in certain quarters that Government might depart from this convention. The Supreme Court Bar Association, thereupon, urged that the convention should be followed. The critics of this convention contend that it is unfair to appoint a person merely on the ground of his seniority to an office, which requires its holder to be a person of outstanding ability and integrity.

previous consent of the President, may make such appointments. Besides, an ex-judge of the Supreme Court may be requested by the Chief Justice to act as a judge of the Supreme Court. This has been provided for a contingency which may arise due to sudden pressure of work. There is also provision for the appointment of Acting Chief Justice.

Qualifications of the Judges

A person to be eligible for appointment as a judge of the Supreme Court must be a citizen of India. Besides, (a) he must have been for at least 5 years a judge of a High Court, or (b) he must have been for at least ten years an Advocate of a High Court, or (c) he must have been in the opinion of the President a distinguished jurist.* In providing for the appointment of a jurist to the Supreme Court, our Constitution has followed the American model. It is, indeed, a salutary provision. For, it empowers the President to appoint to the Supreme Court a person of scholarly habits and eminence, though he may not be a legal practitioner. Obviously, it means that a distinguished jurist, who holds a chair at the University, is also qualified for appointment as a judge to the Supreme Court. Though there has been a provision for appointment of persons outside from the judiciary to the Supreme Court, there has been only one instance of such appointment. Mr. S.M. Sikri, the Advocate General of Punjab, was the first and the only non-judge to be appointed to the Supreme Court in 1964. He is now the Chief Justice of India (1971).

Term of the Office

✓ A Judge of the Supreme Court holds office till he attains the age of sixty-five years.† He may, however, resign his office by tendering his resignation to the President. He may also be removed by an order of the President after an address from each House of the Parliament has been presented for his removal on the ground of

*A loophole has been left for discretionary appointment, for there can hardly be a measuring yard-stick for determining a 'distinguished jurist'.

†Mr. K. Subha Rao, a former Chief Justice of India, has very recently pleaded for the retirement age to be raised to 70 years. The Government is in favour of raising the retirement age to 68, as stated by Mr. Chavan in the Lok Sabha.

proved misbehaviour or incapacity.* This address must be supported by a majority of the total membership of each House and by a majority of not less than two-thirds of the members present and voting. This strict procedure for the removal of the judges is intended to ensure security of tenure, which is essential to make the judges independent and impartial in the administration of justice.

Prohibition of Practice after Retirement

It has been specifically provided in the Constitution that a person, who has held the office of a judge in the Supreme Court (even after his retirement or otherwise), cannot plead or act in any court or before an authority such as the Income Tax Tribunal or Labour Tribunal. This provision has been made to keep up the dignity of the court and the judge himself. It is also in the interest of the administration of justice, because the presence of an ex-judge may possibly influence the decisions of the judges before whom he appears. There is, however, no constitutional bar on the appointment of a retired judge as Governor of a State or Chairman or member of a committee or commission instituted by the Government. This is, in a way, open to objection. The possibility of such an appointment after the retirement is likely to have a corrupting influence on the independence and integrity of a judge while in office. The Law Commission have, therefore, objected to the acceptance of employment by the retired judges under the Union or a State Government, as also to the setting up of chamber practice by them.

Judges' pay, Pension and Allowances

✓ The salaries of the judges of the Supreme Court have been fixed by the Constitution. The Chief Justice receives a monthly salary of Rs.5,000, while an associate judge draws Rs.4,000 as his salary per month.† In addition to this, every judge is entitled to free official residence and certain allowances and privileges. Facilities for

*The word 'proved' clearly indicates that an action can be initiated only after the allegations against a judge have been investigated and established by an impartial tribunal.

†There is a feeling among the high-ups in the country that the pay of the judges of the Supreme Court as well as of High Courts is inadequate. As a result, the best men are not available for filling the posts. No prosperous member of the Bar likes to join the bench, when the pay and pension are so poor, and there is also a bar to the judges resuming practice after retirement.

medical treatment are also provided. The salary, allowances and privileges of a judge, as also his rights in respect of leave of absence or pension, cannot be varied to his disadvantage after his appointment. The salaries of the Judges are charged on the Consolidated Fund of India and cannot be voted upon by Parliament. There is, however, one exception. The salaries of the Judges may be reduced by a law of Parliament during a financial emergency declared by the President.

The pension of a Supreme Court Judge, which is regulated by the Act of Parliament, depends on his length of service. According to reliable calculations, the highest pension, which a judge of the Supreme Court can earn is Rs.2,6000 per annum. A Judge does not become entitled to any pension unless he has served for 7 years as a judge at the Supreme Court. In case the period of his service falls short of 7 years he is entitled only to a sum of Rs. 7,500 per annum, irrespective of the length of his service.

(viii) Establishment

✓ In order to secure complete independence of Judiciary, the Supreme Court is authorised to have its own establishment. It is also given a complete control over it. Hence, all appointments of officers and servants of the Supreme Court are made by the Chief Justice or any other judge or officer, whom he may direct for the purpose. The conditions of service of such officers and servants are regulated by the rules made by the Court. Their salaries and other expenses of the Court are charged on the Consolidated Fund of India. Fees and other moneys taken by the Court form a part of this Fund.

Seat of the Supreme Court

The Supreme Court normally sits in Delhi. But it also sits in such other place or places as the Chief Justice of India may from time to time fix with the approval of the President.

JURISDICTION OF THE SUPREME COURT

Our Constitution confers a wide and extensive jurisdiction on the Supreme Court of India. Commenting on this aspect of the Court, the late Alladi Krishnaswami Ayyar observed : "The Supreme Court of Indian Union has more powers than any Supreme Court in any part of the world." Similar view was

expressed by Sri Motilal Setalvad, the Attorney-General for India, who said : "It can truly be said that the jurisdiction and powers of this Court in their nature and extent are wider than those exercised by the highest court of any country in the Commonwealth or by the Supreme Court of the U. S. A." Though this claim does not appear to be wholly correct, yet it cannot be denied that the Supreme Court of India has wide and varied powers. It has original, appellate and consultative jurisdiction. It has also the power to review its own judgement and to issue directions or orders or writs for the enforcement of the Fundamental Rights.

(a) *Original Jurisdiction (Art. 131)*

The Supreme Court of India has original jurisdiction in any dispute (a) between the Government of India and one or more States ; or (b) between the Government of India and any State or States on the one side and one or more States on the other, or (c) between two or more States, provided such ■ dispute involves a question of law or of fact on which the existence or the extent of a legal right depends. Be it noted that the Supreme Court has this jurisdiction to the exclusion of any other court. In its exclusive original jurisdiction it cannot, however, entertain suits brought by private individuals against the Government of India. Such cases must go in the first instance to State courts and from there they may come to the Supreme Court provided an appeal lies.

The Supreme Court has original jurisdiction also in cases involving the interpretation of the Constitution, the Indian Independence Act, 1947, laws passed by Union Parliament and State Legislatures, but this is not exclusive. Such cases can be initiated in the High Courts also.

In exercise of its original jurisdiction, the Supreme Court can enlarge the bounds of the Constitution by interpreting it in ■ liberal and constructive way. It can also stand in the way of its growth, if it takes ■ highly legislative and narrow view of it. Obviously, the Supreme Court has to play a vital role in interpreting the Constitution and upholding the rights of the Union and the constituent units within the frame-work of the Constitution.

(b) *Appellate Jurisdiction (Art. 132-136)*

The appellate authority of the Supreme Court falls in four categories : (i) appeals from High Courts in cases, which involve

substantial questions of law relating to interpretation of Constitution; (ii) appeals from High Courts in civil cases; (iii) appeals from High Courts in regard to criminal cases; (iv) appeals by special leave of the Supreme Court against any judgement or order etc., passed by any court or tribunal in India.

(i) *In constitutional matters*, an appeal lies to the Supreme Court, if the High Court concerned certifies that the case involves a substantial question of law as to the interpretation of the Constitution. In case the High Court refuses to give such a certificate, the Supreme Court may grant special leave to appeal, if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution.

(ii) *In civil cases*, an appeal lies to the Supreme Court from any judgement, decree or order of a High Court, if the latter certifies that (a) the amount or value of the subject-matter of the dispute is not less than Rs.20,000* or (b) the judgement, decree or order involves a claim or question respecting property of like amount or value; or (c) the case is a fit one for appeal to the Supreme Court. The last provision is most salutary, for it empowers a High Court to give a certificate in any case so that justice may be done.

A High Court must record grounds while either refusing or issuing a certificate. No appeal can lie to the Supreme Court against the judgement of a single judge of a High Court. Besides, the appellate jurisdiction of the Court in civil cases can be enlarged, if Parliament passes a law to that effect.

(iii) *In criminal cases*, an appeal to the Supreme Court is permitted, if a High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such a trial convicted the accused and sentenced him to death, or (c) certifies that the case is a fit one for appeal to the Supreme Court.

The criminal appellate jurisdiction of the Supreme Court is primarily confined to cases, where the sentence is of death.

*In view of the ever increasing number of civil appeals before the Supreme Court, it is proposed that the minimum claim involved in a civil case be raised to Rs. 100,000.

Ordinarily, in other cases, where the sentence is not a sentence of death, no appeal lies. While explaining the importance of the provisions dealing with criminal appellate jurisdiction, Dr. Ambedkar said, "Provisions as regards criminal appeals are brought in conformity with the enlightened conscience of the modern world and of the Indian people."

(iv) *Special Appellate Power.* Article 136 confers a special appellate power on the Supreme Court of India. It lays down that the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. This Article is, obviously, comprehensive in nature and confers ■ plenitude of jurisdiction on the Court*. As a consequence, it has become convenient for the Supreme Court to check arbitrary acts and unjust decisions of the ever-increasing number of administrative tribunals, which the Union and the States are setting up almost daily in the process of realising the objective of a Welfare State.

Under this (136) Article the Supreme Court has granted, in many cases, special leave to appeal against decisions of Election, Labour and Industrial Tribunals, and has prevented the grave miscarriage of justice in cases, where the decisions turned entirely on facts. The Law Commission in its report expressed an opinion that the Supreme Court has been very liberal in granting special leave under Article 136, particularly in criminal matters. As ■ consequence, notwithstanding the restricted right of appeal granted under Article 134, the Supreme Court is being looked upon more and more as a final court of criminal appeal.**

(c) *Consultative Jurisdiction*

The Constitution has also given the Supreme Court of India

*Alladi Krishnaswami said : "The jurisdiction of the Supreme Court extends over every order in any cause or matter passed by any Court, or tribunal in the territory of India. Secondly, the Supreme Court is free to develop its own rules and conventions in the exercise of its jurisdiction. For example, there is nothing to prevent the Court from interfering even in ■ criminal case when there is miscarriage of justice, where a Court has misdirected itself or where there is a serious error of law... The Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country in such ■ way that it could do complete justice in every kind of case or matter.

**Tope, T.K. : *Constitution of India*, P. 211.

some adversory functions. It gives its opinion on important questions of law or facts referred to it by the President. Under Article 143 (2) of the Constitution the President is empowered to refer to the Supreme Court, for its opinion, disputes arising out of any treaty, agreement etc., which had been entered into or executed before the commencement of the Constitution. In such cases, the Supreme Court is bound to give its opinion to the President. The opinion of the Supreme Court is, however, not binding on the President. It would be gratifying to note that some very important issues have been settled through advisory opinion of the Supreme Court. The most important amongst them are those relating to Kerala Education Bill, Union-State relations and the dispute between the U.P. Vidhan Sabha and the State High Court.

Power to Review

Although it is said that a lower court is concerned with facts, a High Court with error of the judgement of the lower court and the Supreme Court with wisdom, even then a mistake, or error may creep into the judgement of the Supreme Court itself. The Supreme Court is, therefore, vested with the power to review any of its own decisions or orders and thereby rectify the wrong, if any, in its judgement. The grant of the power to review is also necessary, because there is no appeal against the judgement of the Supreme Court. This power is, however, subject to the provisions of any law made by Parliament or any rules made by the Supreme Court itself.

Enlargement of Jurisdiction (Art. 138)

Parliament is empowered to enlarge by law the jurisdiction of the Supreme Court (a) with respect to any of the matters included in the Union List, and (b) with respect to any matter as Government of India and the Government of any State may by special agreement confer. Parliament may by law also (c) confer on the Supreme Court power to issue directions, orders or writs for any purpose other than the enforcement of Fundamental Rights ; (d) make provision for conferring upon the Supreme Court such supplemental powers (not inconsistent with any of the provisions of the Constitution) as may be considered desirable for the effective exercise of its jurisdiction.

✓ A Court of Record

The Supreme Court is also ■ court of record. Its acts and proceedings are recorded for perpetual memory and testimony.

Its records are of evidentiary value and they are not to be questioned, when produced or cited before any lower court or subordinate court. Being a court of record, the Supreme Court has the power to punish for contempt of itself. It was stated in *Hiralal vs. State of U. P.* that this power is to be used sparingly and only when a statement seeks to interfere with the administration of justice or to undermine the confidence of the community in the free and fair administration of justice.

Custodian and Interpreter of the Constitution (Judicial Review)

The Indian Constitution in its Arts. 131, 136 and 246 has specifically provided for the judicial review. The Supreme Court of India, in exercise of this power, can scrutinize any law passed by Parliament or a State Legislature to determine its constitutionality. The Executive also cannot claim a total immunity for its acts from the scrutiny of the Court (Hidayatullah). (The Supreme Court can strike down any law of the Parliament or a State legislature, which it considers as *ultra vires* of the Constitution. Though the scope of judicial review in India is not as wide as it is in America, yet it is sufficient to make the Supreme Court a powerful agency to control the authority of both the Executive and the Legislature. In England, the position is entirely different. The judiciary over there has no right to consider the competence of Parliament to pass any law or to consider the constitutionality of any law. On the other hand, it has to bow before the sovereign Parliament.

It is often argued with a considerable force that the power of judicial review may act as a serious impediment to important social and economic legislations, which India may desire to carry through in order to achieve its objective of a Welfare State. It is also contended that Courts of Law may invalidate legislation on narrow theoretical grounds overlooking the larger public good. Some critics even go to the extent of pointing out that the fathers of the Constitution would have acted wisely, if they had made Parliament, rather than Judiciary, the custodian of Fundamental Rights. For, Parliament is the best judge of what legislation is necessary and to what extent a legislation should trespass individual rights. Ever since the Supreme Court has invalidated the Government decisions with regard to the bank nationalisation and derecognition of princes, the critics have become more vehement in their denunciation of the judicial review.

No doubt, there is some weight in the above criticism. But, at the same time, there can be no two opinions about the fact that the Constitution-makers had enough justification in placing the Legislature under the control of the Judiciary. In the first place, they had the feeling that it would be dangerous to give uncontrolled power of legislation to the legislatures at the very inception of the new State. Secondly, it was hoped that for a long time to come only one Party (Congress) would remain in power with hardly any Opposition. If a single Party was given the power to ride roughshod over individual rights and to ignore the protests of those, who do not belong to that Party, it was feared, the cause of democracy would suffer. Therefore, even at the risk of slowing down the progress of the country, but in the interests of freedom and democracy, the Constitution—framers thought it wise to make Judiciary independent of the Legislature and also to provide for judicial review.

INDEPENDENCE OF JUDICIARY

The makers of our Constitution were fully alive to the high responsibility vested in the Judges. They wished to make them independent, impartial and incorruptible. It was also their effort to keep them free from the influence and control of the Executive. They, therefore, made specific provisions with regard to the mode of their appointment, procedure of removal and tenure of their office. As provided in the Indian Constitution, (a) the Executive does not have an unfettered discretion in the appointment of judges ; (b) the judges cannot be removed arbitrarily from their office ; (c) the salaries of the judges are fixed by the Constitution and are charged on the 'Consolidated Fund of India', which is not votable ; (d) the salaries, allowances and privileges of the judges cannot be varied to their disadvantage ; (e) the conduct of the judges in the discharge of their duties cannot be discussed by the Parliament. The Supreme Court has complete control over its establishment. Besides, in view of the established convention of accepting the recommendations of the Chief Justice of India in the appointments of Supreme Court Judges, political appointments of judges, if any, are negligible. Fortunately, the Bar Association in India keeps a strict watch against any such political appointments.

In spite of these constitutional safeguards, the judiciary of India is not well protected against the influence of the Executive and

Legislature. It is evident not only from some of the provisions of the Constitution but also from the trends of political affairs.

Supreme Court vis-a-vis Executive

Mr. Setalvad, the retired Attorney-General of India, observed in October, 1968 that "because of the prevailing conditions, high cost of living and poor emoluments of the judges, the judiciary still remains a great deal controlled and pressurised by the Executive". The influence of the Executive over the judiciary is in part due to the patronage which rests with the former in respect of the appointment of the retired judges. A judge well-inclined towards the Government stands every chance to win any of these favours : (a) he may be recalled to duty on the bench after the retirement ; (b) he may be sent as Governor of ■ State ; (c) he may be appointed as chairman or member of a Committee or Commission instituted by the Government from time to time. The temptations are, no doubt, sufficiently great. Particularly, for a person, who is debarred from practice after his retirement and who finds his colleagues being favoured with such appointments.* The practice of giving remunerative employment to retired judges is often severely criticised. For, it makes the judges look forward to being employed by the Government after their retirement. And this, in turn, does not allow them to be just and impartial in the administration of justice. As is evident from their report, even the Law Commission held a similar view : "We are clearly of the view that this practice has a tendency to affect the independence of ■ judge and should be discontinued. It makes it difficult for the judges to work with detachment of outlook, which is expected of them in cases in which Government is a party."

The ominous trends, which have been noticed in the last few years, have put the judiciary in a disappointing situation. If the decision of the Supreme Court is favourable to the Government of the day, nothing is said about it. If it is unfavourable, the judges are hauled over the coals. Thus, when the Supreme Court upheld the President's election, no body raised ■ finger of criticism. But when it struck down the Bank Nationalisation Act and the President's Order derecognising the Princes, there was a howl of criticism. It is no less distressing that our Prime Minister (Mrs. Gandhi) refers to certain Supreme Court judgements as

* Many judges have been given such assignments after retirement.

hurdles in the way of progress and calls upon public opinion to pressurize the judges. There is also a talk of initiating impeachment proceedings against certain judges. These threats and attacks are highly objectionable. An attack on the judge is virtually an attack on the entire constitutional fabric. It is, therefore, in the vital interests of the country that such trends should be checked, as they undermine the people's faith in the judiciary.

Supreme Court vis-a-vis Parliament

The Parliament, being a sovereign body under the Constitution, has been given some regulatory powers with regard to the constitution, organisation and jurisdiction of the Supreme Court. The Parliament can by law increase the number of the judges; it has the power to remove a judge from his office; it can by law change or regulate the privileges, allowances, etc. of the judges; it can expand the jurisdiction of the Supreme Court. The rule-making powers of the Supreme Court are subject to the provisions of any law made by the Parliament.

It is true that the Constitution provides for a strict procedure for the removal of the judges. Yet, the psychological effect of the threat of removal is definitely there. Particularly, when 'a judge who makes himself undesirable in the eyes of the Government may be pre-maturely removed and thrown into private life without pension, in some cases, and without even a scope for making honest use of his legal training for earning his livelihood'.*

GOLAK NATH CASE, 1967

The Supreme Court, in its judgement in the Golak Nath Case by a majority of six to five, declared that Fundamental Rights are outside the amending process; the Parliament has no power (by process of amendment of the Constitution) to take away or abridge the fundamental rights of the people. Justice Hidayatullah, on the majority side, also held that for abridging or taking away the fundamental rights a Constituent Assembly would have to be convoked. This judgement in 1967 and since has been a subject of discussion and criticism throughout India. It has raised the question of the place, which the judiciary occupies in the scheme of our Constitution.

* Dash, A.C. : *The Constitution of India (A comparative Study)*, P, 387.

Critics' view-point

The critics of this judgement have put forth a series of arguments against the Supreme Court decision. They forcefully contended that

(a) The Parliament is supreme and it can, therefore, amend every part of the Constitution.

(b) The Parliament is an elected body, whereas the judges of the Supreme Court are nominated. The Supreme Court, therefore, cannot prevent the Parliament from amending the Constitution.

(c) There is a conflict between the Parliament and the Judiciary.

(d) The Parliament is more representative than was the Constituent Assembly.

(e) The views of the minority of the judges Supreme Court in the Golak Nath case are clear, convincing and perfectly in accordance with the relevant provision of the Constitution. It is pity that they have not been accepted because they are the views of the minority.

(f) So long as Golak Nath case holds the field, no progress in the social and economic spheres is possible.

As regards the proposal of convoking the constituent Assembly two serious objections have been raised by the critics : (i) It is impossible to convoke an all-India Constituent Assembly every time it is considered necessary to make a change in any of our fundamental rights. It would entail an enormous waste of time, energy and tax-payer's money ; (ii) who will convoke the Constituent Assembly and under what authority ? There is no provision for it in our Constitution.

Arguments of the upholders

The upholders of the Supreme Court judgement are of the view that the above criticism is emotional. It is based upon a misapprehension of the fundamental principles of the Constitution itself. To refute the above cited arguments, they contend that

(a) Under the constitutional democracy, the Constitution is supreme and Parliament cannot overstep the limits laid down by the Constitution.

(b) Both the Parliament and the Supreme Court are created by the Constitution. Both should function in terms of the Constitution.

(c) There is no conflict between the Parliament and the Supreme Court. The Parliament made an amendment to the Constitution. The aggrieved Party (Golak Nath) approached the Supreme Court by appropriate proceedings, made the State respondent and questioned the validity of the said Act. The Supreme Court declared the amending Act invalid. The conflict was between the citizen and the State. The Supreme Court decided the dispute between them.

(d) The Court is the last to stand in the way of country's progress, if the laws made by the State are reasonable and in the public interest and also within its constitutional competence. As a matter of fact, the State does not like the judicial check. It wants to bring about reforms in exercise of its arbitrary power.

(e) It is wrong to argue that the judgement protected the property rights of the people ; the judgement really went against the propertied classes. For, under the judgement, all the amendments taking away or abridging their fundamental rights to property and to business were preserved for the past as well as for the future.

(f) If the Parliament, by process of amendment of the Constitution, succeeds in obtaining the power to take away or to abridge the fundamental rights (as was planned by Nath Pai's Bill), then democracy in India would be placed in a very dangerous situation. For, it would make it possible for a powerful Prime Minister, with a requisite majority at his/her command, to take away all fundamental rights and become a despot. The rights of the people and those of the minorities would be at the mercy of the Parliament. History records many instances, when a powerful leader used the Parliament to destroy the Constitution itself.

Conclusion

The majority judgement in the Golak Nath case has created a very serious situation, which annoys particularly the progressive politician. He fanatically points out that the judgement has assigned a key position to the judiciary in all socio-economic

measures, while the Parliament has been made ineffective. 'If six lawyers can negative the will of the several crores of men, then the art of government in India is reduced to the selection of those six lawyers.' It is no use criticising the Indian Judiciary, which must interpret the law as it is. The persons in authority should find out a suitable solution of the tangle so that the Judiciary and Legislature may work in co-operation to achieve the goal of a Welfare State.

Performance of the Supreme Court

In spite of the fact that Judiciary in India is not well-protected against the influence of the Executive ; in spite of the fact that it is openly accused or threatened with serious consequences—the performance of our Supreme Court during the last two decades has been quite satisfactory. In the words of N. A. Palkhivala, "The Supreme Court and High Courts in India have rendered memorable and enduring service to the Republic during the last twenty years. They have upheld and justified the Fundamental Rights and prevented encroachment by the State upon them." The judges have always held the scales even, unmindful of whom they displease, high or low. Recent judgements invalidating some governmental decisions (relating to Bank Nationalisation and derecognition of Princes) and upholding the citizens' fundamental rights are a proof of its unflinching adherence to the basic principles of Justice and of creditable fulfilment of the Court's main purpose—to interpret the law without fear or favour. Besides, the Supreme Court Judges have not allowed themselves to be affected by emotional popular feelings, nor have they shown any vindictiveness in contempt proceedings. An unqualified apology is almost always accepted.* In its capacity as a guardian of the rights of the people, the Supreme Court has always functioned independently of the Executive. It has boldly raised its hand against any encroachment on them by the Executive. Moreover, it has made a notable contribution by its interpretation, classification and elaboration of the clauses of Articles relating to Fundamental Rights. While adjudging the validity of laws or executive acts, it struck down those, which were found *ultra vires* of the Constitution.

It is, sometimes, alleged that judiciary in India is reactionary and an obstacle to progressive legislation. It stood in the way

*Recently, in the case of Kerela Chief Minister Nomboodripad, the Supreme Court while reducing the fine of Rs. 1000 imposed by High Court to Rs. 50, only remarked : "We think it was hardly necessary to impose a heavy fine."

of Government's efforts to abolish Privy Purses, as it put a hurdle at the time of Bank Nationalisation. There is not much weight in this contention. The Supreme Court would have never obstructed the efforts of the Government, if the law made by it (Government) were found to be valid, reasonable and within the competence of the Executive. In exercise of its power of judicial review, the Supreme Court must judge the validity of a legislative measure, when the aggrieved party approaches it for justice. It is also its duty to keep the various organs of the Government within their bounds. Hence, it is, unfair to criticise or blackmail the judiciary, whose role, in spite of various strains and stresses, has all along been impartial, independent and commendable. To make it more effective and useful to the cause of democracy, our Government should increase the salaries of the judges so that the talented members of the Bar may feel attracted to join the bench.* It should also give them greater sense of security and the respect they deserve as guardians of our Constitution.

FURTHER READING

1. *K. Subba Rao* : Conflict in Polity.
2. *A.C. Dash* : The Constitution of India.
(Comparative Study)
3. *T.K. Tope* : The Constitution of India.
4. *D.D. Basu* : Commentaries on the Indian
Constitution.
5. *P.B. Gajendragadakar* : Law, Liberty and Social Justice.
6. *B.M. Shama* : The Republic of India.

*Even the Indian Law Commission has itself admitted: "It is undoubtedly true that the best talent has not always found its way to the Supreme Court." Mr. Subba Rao, ■ former Chief Justice of India, has recently recommended the following minimum conditions for the Supreme Court Judges: (a) The Chief Justice of India should get Rs. 6,000/- and other Judges Rs. 5,500/- per month as their salary; (b) they should be given fully furnished free official residence, with ■ well-equipped library and ■ law assistant; (c) their retirement age should be raised to seventy years; (d) every Supreme Court Judge should get two-thirds of his salary as pension and his widow one-third. The Government is favourably considering the various proposals including talents to the judiciary. A proposal to raise the salary of the judges by Rs. 500/- per month was even considered. But the matter is being delayed ■ it involves ■ constitutional amendment.

CHAPTER 30

The Government of the States

States—Primary units of the Indian Union

The political map of India to-day presents a comparatively simple picture in contrast to what it was in 1947 when India became free. In 1947, it comprised about 18 units directly administered by the Indian Government along with 562 princely states. But now there are 18 States and 9 Union Territories. The States, which form the primary constituent units of the Indian Union, are : Andhra Pradesh, Assam, Bihar, Gujrat, Haryana, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Tamilnadu, Maharashtra, Mysore, Nagaland, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal. Many of these States are far bigger in area and population than some independent countries of Europe. For example, Uttar Pradesh has an area of 1,13,654 square miles and a population of more than 88 million. Similarly, Andhra Pradesh (area 1,06,286 sq. miles and population about 43 million) and Madhya Pradesh (area, 1,71,217 sq. miles and population 41 million) are also sufficiently large in point of area and population.

Uniform Constitutional Status except for Jammu and Kashmir

Though these States differ from one another considerably in point of area, population and economic resources, yet they have a uniform constitutional status. They enjoy a good deal of autonomy

in the sphere allotted to them by the Constitution, and the structure and organization of their governmental set-up is patterned largely on that obtaining at the Centre. In other words, they have a parliamentary responsible form of government based on universal adult franchise. The State of Jammu and Kashmir has, however, a special constitutional position. In its relations with the Centre, this State enjoys a far greater measure of autonomy than any other state.

Five Zones and Zonal Councils

A number of States have been grouped together into zones under the States Reorganization Act of 1956. There are in all five zones : (a) *The Northern Zone*—it has Punjab, Rajasthan, Jammu and Kashmir, Delhi and Himachal Pradesh. (b) *The Central Zone*—in it are included only two states, Uttar Pradesh and Madhya Pradesh. (c) *The Eastern Zone*—it comprises Bihar, Orissa, West Bengal, Assam, Manipur and Tripura. (d) *The Western Zone*—it includes Gujrat, Maharashtra and Mysore. (e) *The Southern Zone*—it has in it Andhra Pradesh, Tamilnadu and Kerala.

Each of these Zones has a Zonal Council. This Council consists of a Minister of the Government of India nominated by the President, the Chief Minister and two other Ministers of each of the states in the zone, and two representatives of the Union Territories (where these Territories form a part of a zone) nominated by the President. The Union Minister nominated by the President is the Chairman of the Zonal Council.

The Zonal Councils are mainly advisory and deliberative bodies. They have been formed to serve as a forum to bring about closer co-operation among the States, to settle inter-state disputes and to formulate inter-state development schemes. The Council takes decisions by majority-vote, the Chairman having a casting vote. Sometimes, two or more Zonal Councils may hold joint meetings. Each Council has its Secretariat to carry out its work. In practice, the activity of the Zonal Councils depends largely on the personality of the Union Home Minister. *The Statesman* of Calcutta wrote in January, 1965, "The Zonal Council, heralded with some fan-fare are kept longer in mothballs than out, and even when they are convened, are they mostly called upon to deal with relatively minor matters."

SECTION I

(A) STATE EXECUTIVE

(The Governor and Council of Ministers)

The executive power of the State is vested in the Governor. He is provided with a Council of Ministers, with the Chief Minister at its head, to advise him in the exercise of his functions. The Governor is the constitutional head of the State, while the Council of Ministers is the real executive.

Appointment of the Governor

The Governor of a State is appointed by the President on the advice of the Union Cabinet¹. He remains in office during the pleasure of the President and normally his tenure is five years. He may resign his office even before the expiry of his tenure. Under the Constitution, as amended by the Constitution (Seventh Amendment) Act, 1956, the same person can be appointed as Governor of one or more States.

Two healthy conventions have, however, grown up with regard to the appointment of the Governors in the States. The person selected for a post of a Governor is normally an outsider, ■ resident of another State. Secondly, the Governor of a State is not only the nominee of the Central Government but also one who is agreeable to the State concerned. Such a result is obtained by consulting the State Cabinet prior to the appointment of a new Governor.

1. In the original draft of the Constitution, it was proposed that the Governor should be elected by the people of the State. But the Constituent Assembly did not favour the idea on the ground that an elected Governor might assume real powers and become a real rather than a nominal head of the state administration. It was also feared that in the event of a conflict between him and the Ministers, he might appeal to the people against the latter, thus creating an extremely awkward situation. The Fathers of the Constitution also did not like to make him ■ choice of the State Legislature as it would make him a pawn in the hands of the political party or parties that secured his election. Hence the appointment of the Governor by the President was favoured with the added consideration that it would be most in conformity with the principles of Parliamentary Government and with the role he was intended to play in the State administration.

Qualifications

To be eligible for appointment as Governor of a State, a person must be a citizen of India and must have attained the age of 35 years. The Governor cannot be a member of either House of Parliament or of any State Legislature, nor can he hold any office of profit.

Emoluments

The Governor of a State draws a salary of Rs. 5,500 per month. He is also entitled to free official residence and prescribed travelling, sumptuary and other allowances. In case there is a common Governor of two or more States, the emoluments and allowances payable to the Governor are to be allocated among these States in such proportion as the President by order determines. The salary and allowances of a Governor cannot be reduced during his term of office. They are charged on the Consolidated Fund of the state and as such are non-votable.

POWERS AND FUNCTIONS OF THE GOVERNOR

Our Constitution confers a large number of powers on the State Governor. These powers may be grouped under the following four heads : (a) Executive, (b) Legislative, (c) Financial and (d) Judicial.

(a) Executive Powers

The executive power of the State is vested in the Governor, who can exercise it either directly or through officers subordinate to him. All executive actions of the State Government are taken in his name. He is authorised to make rules regarding the way in which orders and instructions made and executed in his name are to be authenticated. The Governor appoints the Chief Minister and on his advice the other Ministers. He allocates business of the Government among the Ministers and makes rules for the convenient transaction of such business.) (The Governor also appoints the Advocate-General, the Chairman and members of the State Public Service Commission. He is consulted in the matter of the appointment of the judges of the State High Court. The Governors of Bihar, Madhya Pradesh and Orissa have a special responsibility to see that the Councils of Ministers in their respective States have a Minister incharge of tribal welfare. The Governor of Assam has certain special powers with regard to the

administration of tribal areas as provided in the Sixth Schedule of the Constitution. The President may, with respect to the State of Andhra Pradesh, provide for any special responsibility of the Governor to secure the proper functioning of the regional committees of the Legislative Assembly of the State. He (President) may also by order impose special responsibility in the Governors of Maharashtra and Gujarat in respect of some specified matters.

The Governor exercises a general supervision over the State administration. In order to furnish the Governor with all necessary information and thus to enable him to exercise his authority more effectively as head of the State, the Chief Minister is required (1) to submit to him all decisions of the Council of Ministers relating to administration and proposals for legislation, (2) to furnish such other information as the Governor may call for, (3) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not yet been considered by the Council of Ministers. The executive power of the Governor extends to all matters in which State Legislature has the power to make laws.

Legislative Powers

The Governor has certain legislative powers also. Laws passed by the State Legislature become valid only after his assent. He is empowered to withhold his assent to a bill, to reserve it for the President's consideration or return the bill to the Legislature for reconsideration. But, if a bill is passed a second time, the Governor must give his assent thereto. The Governor has, however, no power to return a Money Bill.

By virtue of his legislative powers, the Governor of a State can summon the State Legislature, prorogue either House thereof or dissolve the Legislative Assembly. He may also address the Legislature either separately or jointly. He may send messages to the Legislature whether in respect of a bill pending before it or otherwise. The Governor has also the power to nominate some members of the Legislative Council if the State has a bicameral legislature. He can also nominate representatives of the Anglo-Indian community to the Legislative Assembly, if he finds that this community is not adequately represented therein.

The Governor has the power to issue ordinances, when the

State Legislature is not in session and immediate action is called for. Such an ordinance has the same force as an Act passed by the State Legislature. But, it must be placed before the Legislature of the State, when it reassembles and shall cease to be effective at the expiry of six weeks from the date on which the Legislature meets. The ordinance may be withdrawn earlier or disapproved by the Legislature before the expiry of the period of six weeks. In certain cases, the Governor has, however, no power to promulgate an ordinance without the previous instructions from the President.

(c) Financial Powers

Before the commencement of every financial year, the Governor causes to be laid (through the Finance Minister) before the State Legislature a statement of the estimated receipts and expenditure of the State for that year. No demand for a grant can be made except on his recommendation. The Governor has also some powers with regard to Money and Financial Bills. No Money Bill or Bill with money clauses can be introduced in the Legislative Assembly without his recommendation. The State Contingency Fund is at the disposal of the Governor, who can make advances out of it to meet any unforeseen expenditure. Such an expenditure must subsequently be authorized by the Assembly.

(d) Judicial Powers

Like the President of India, the Governor also has the power to grant pardons, reprieves, respites or remission of punishment to any person convicted of any offence against any law relating to a matter under jurisdiction of the State Government. He can also, suspend, remit or commute sentences in certain cases. Besides, the Governor can determine the appointments, postings and promotions of the district judges and other judicial officers. The Governor enjoys personal immunity from all civil and criminal proceedings during his term of office.

POSITION AND ROLE OF THE GOVERNOR

From a purely theoretical point of view, the Governor is the sole executive authority in the State and the Ministers are there simply to aid and advise him in the exercise of his functions. But in reality the position is entirely different. The Governor of a

State, like the Governor of a province in Canada or a State in Australia, is a mere figure-head. He is the nominal executive, the real executive being the Council of Ministers. Of course, the Constitution does not provide explicitly or unequivocally that the Governor must in every case accept the advice of his Ministers. But under a system of responsible government, it is inevitable that he should normally be guided by his Ministers in all matters. In case the Governor does not accept the advice of the Ministers commanding a stable majority in the Assembly, they will resign, thus, making it difficult for the Governor to have a Council of Ministers constituted from amongst the members of the Legislature and, at the same time, acceptable to the Lower House. Obviously, under a fully responsible system of government, it is difficult to think of a Governor to behave in an authoritarian manner. To quote M.V. Pylee, "When a Cabinet composed of popular Ministers, collectively responsible to the Legislature, is to aid and advise the Governor in the discharge of his functions, occasions are almost non-existent for him to overrule them or to act in a manner contrary to their advice."

But all this does not mean that the Governor is a mere figure-head, "a rubber-stamp of his Cabinet or a post-office between his cabinet and the President or between his Cabinet and the officical gazette". He is, on the other hand, an important functionary expected to lubricate the machinery of Government and to see that all the wheels are going well.† According to K. M. Munshi, "The Governor is the watch-dog of constitutional propriety and the link which binds the Centre to the States, thus securing the constitutional unity of India". The Governor is the agent of the President, his adviser on the affairs of the State and the representative of the Union in the State. He maintains the dignity and stability of the State Government. He gives his assent (though it is just a formality) to all decisions of the Council of Ministers relating to affairs of the State or proposals for legislation. He is the custodian of the interests of the minorities. He is required, by oath of his office, to preserve, protect and defend the Constitution. He can also play a vital role by providing non-partisan leadership. Finally, he is one of the very few important functionaries of the Government whom all parties and interests can look upon : for impartial support.

†Sen. P.K. C.A.D. VIII P. 446.

On many an occasion the Governor can act in his discretion *i.e.* without seeking the advice of the Ministers. The important amongst such occasions are : (1) the selection of a Chief Minister prior to the formation of the Council of Ministers ; (2) dismissal of a Ministry ; (3) dissolution of the Legislative Council ; (4) asking information from the Chief Minister relating to legislative and administrative matters ; (5) refusing to give assent to a Bill passed by the Legislature and sending it back for reconsideration ; (6) reserving a Bill passed by the State Legislature for the consideration of the President ; (7) advising the President for the proclamation of an emergency. But, here too, the Governor is not a free agent in the exercise of his discretion. If he misuses his discretionary powers, the President is there to check him and, if necessary, he may even dismiss him.

During the period of emergency, of course, the Governor comes into his own as the real executive in the State. With the proclamation of emergency by the President the entire administration of the State comes under the direct control of the Union. Being the 'man on the spot' and the agent of the President, the Governor takes over the reins of the Government directly into his hands and runs the administration with the help of the civil service. But in the emergency period also the Governor works under the direct control of the Central Government.

From all that has been discussed above, we come to the conclusion that the Governor is not a free agent, either during the normal or abnormal times. His role is that of an adviser. On the one hand, he is a non-partisan adviser to the Council of Ministers in the State. On the other hand, he is an adviser to the President on the affairs of the State. Besides, he is also a constitutional head of the Government. The role of the Governor considerably depends upon the person himself. In the words of one who was privileged to know the position from inside : "A Governor can do a great deal of good, if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution. According to T.K. Tope, the Governor of a State if supported by the President of India, can become a ruler of the State in the real sense of the term. He may no longer be a constitutional head*".

*Tope T. K. : The Constitution of India ; P. 232.

Role in historical perspective

The role of the Governors during 1950—67 could not be effective nor could their office inspire the much-needed confidence and reverence. Rather the authority and prestige of the Governorship gradually declined. This unhappy state of affairs was the outcome of various factors. In the first place, as a result of the unchallenged Congress monopoly of political power, both at the centre and in most of the States, the Congress Chief Ministers and their Cabinet colleagues remained all powerful in their respective spheres. The Governors simply rubber-stamped the ministerial decisions. Secondly, the unhealthy practice of offering Governorship to retired or unsuccessful politicians lowered the prestige and importance of this office. The Governorship, thus, became 'an old age pension to a weary politician' or 'a consolation prize for a Congressman defected at the polls'. Unfavourably impressed by the position a Governor during the period mentioned above, Sarojini Naidu described him as 'a bird in a golden cage'. Some critics went even to the extent of demanding the abolition of Governorship which seemed to them 'expensive and unnecessary anachronism.'

The fourth general elections of 1967 and the consequent emergence of non-Congress ministries in a number of States, changed the situation in favour of the Governors. For, the one-dominant party pattern ended; the political defections became rampant; and the Chief Ministers of the uneasy coalitions found it difficult to deal with the Governors from a position of invulnerable strength. The split in the Congress ranks (Ruling and Organisation) gave the Governors an added advantage. Under the circumstances, the Governors became active participants in the constitutional process. But their decisions and use of discretionary powers soon provoked criticism from various quarters. Some of the Governors were accused of partisanship; some of following the double standards; some of dabbling in politics; and some of yielding to the undue pressure of the centre in toppling the State Ministries.

The failure of the Governors to act similarly in similar circumstances was the chief ground of these allegations. But, in view of the fact that every political party is anxious to have the Governor's powers exercised in a manner most favourable to its interest, makes these allegations less tenable. To remedy the situation and to find a suitable solution of the controversies regarding

Governor's discretionary powers, some Governors like Sri Dharm Vir made a demand for guide-lines to their advantage. But the formulation of the guide-lines is not an easy affair. Moreover, there is every possibility that formally laid down guide-lines may run into conflict with the provisions in the Constitution. Hence, under the circumstances it is argued that the Governors should adhere strictly to his role as a constitutional head of the state. He should avoid giving impression of partisanship even when he takes a decision in his discretion. The Chief Minister, on the other hand, must accept the discipline of the parliamentary government without any reserve. This would eliminate the need of guide-lines and will also make the working of the Government smooth and efficient.

SECTION II

THE COUNCIL OF MINISTERS

Procedure for appointment of Ministers

The Constitution in its Article 163 provides that there shall be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion. It also lays down the procedure for the appointment of the Ministers. The Chief Minister is appointed by the Governor, who also appoints other Ministers on the advice of the Chief Minister. All Ministers are required to be the members of the State Legislature. A person, who is not a member of the State Legislature, may be appointed a Minister, but he ceases to hold his office after six months unless within that period he gets himself elected to the State Legislature. The Governor may choose the Chief Minister from the Legislative Council (as Sri Rajgopalacharia was chosen as Chief Minister of Madras). There is also no bar on his selecting a nominated member of the Legislative Council as Chief Minister. But the Council of Ministers is collectively responsible to the Legislative Assembly and this fact forces the selection of the Chief Minister from the Lower House of the Legislature.

In his selection of Chief Minister, the Governor is, of course, bound by one major consideration. He has to see that the person so chosen is capable of commanding a stable majority in the State Legislative Assembly. In case there is a party or a coalition of

parties commanding absolute majority, the Governor has no alternative but to summon their leader to form a ministry. Thus, the Chief Minister is, in fact, the choice of the majority party in the Legislative Assembly. The leader chosen by it is accepted as Chief Minister by the Governor.

The Size of the Council of Ministers

The size of the Council of Ministers is variable according to the discretion of the Chief Minister under the political circumstances. The only constitutional requirement is that in the States of Bihar, Madhya Pradesh and Orissa, the Council of Ministers must have a Minister incharge of Tribal Welfare. The strength of Council of Ministers, therefore, varies from State to State and also, in the same State, from time to time. It is a common complaint that the Councils of Ministers in the States are unduly large and it heavily burdens the exchequer. The Chief Ministers should reduce the strength of Ministers and thereby set a good example.

Distribution of Work—Deputy Ministers and Parliamentary Secretaries

Every Minister in the State is the head of one or more administrative departments and is responsible for their proper working. He supervises the departments under his control and sees that the policy collectively formulated by the Cabinet is properly executed. He may have one or more Parliamentary Secretaries to assist him in the discharge of his administrative duties. The Parliamentary Secretaries are appointed from amongst the members of the Legislature. But they are not members of the Council of Ministers, nor are they entitled to attend its meetings. They may, of course, become Ministers in due course of time. The practice of appointing Deputy Ministers has also been adopted in many States. They receive a salary less than the Ministers. They have no separate charge of any department. Their task is to assist the Ministers with whom they are associated in their administrative and parliamentary duties.

The Chief Minister—His duties

The duties of the Chief Minister in a State are similar to those of the Prime Minister of the Union. As head of the Council of Ministers in a State, he has to communicate to the Governor all the decisions of the Council relating to the administration of the affairs of the State and proposals for legislation. He has also to

furnish any information which the Governor calls for and which is concerned with the administrative and legislative matters of the State. It is also one of his duties to place before the Council, if the Governor so requires, any matter on which a decision has been taken by a Minister without consulting his colleagues in the Council.

Emoluments of the Ministers

The salaries and allowances of the Ministers are determined by the State Legislature by law and they may be increased or reduced by passing a bill. Every Minister has to take an oath before he/she enters upon the office.

Relations with the Governor

The Council of Ministers is the real executive in the State. Although the administration is run in the name of the Governor, yet the actual decisions, in most of the cases, are taken by the Ministers. Under normal circumstances, the Governor has to act on their advice. Even in nominating members of the Legislative Council, he does not act in his discretion. Of course, there is nothing in the Constitution to bind the Governor to accept the advice of the Council of Ministers, but he has to accept their advice as a matter of political necessity. If the Governor rejects the advice tendered by the Council of Ministers enjoying the confidence of the Assembly, the Ministers would resign their office in protest. It would then be difficult for the Governor to find another set of Ministers commanding the support of the Assembly.

Article 167 provides that it is the duty of the Chief Minister of the State to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation and to furnish such information relating to the above as the Governor may call for. If a matter has been decided by an individual Minister, the Governor may require it to be submitted to the consideration of the Council of Ministers as a whole. Thus the Governor has a right to be kept informed. He may also advise, encourage and warn his Ministers regarding a course of action contemplated by them. But once they have made up their mind, he has to sign on the dotted line. However, there are certain conditions under which the Governor may act without consulting the Council of Ministers. For instance, the Governor may act in his discretion, when the

President declares the Proclamation of Emergency following the failure of constitutional machinery in a State.

It is laid down in the Constitution that the Ministers are to hold office during the pleasure of the Governor. This may be taken to imply that the Governor can dismiss the Ministers, if he so likes. But such an action is contrary to the spirit and traditions of responsible government. The theoretical power may be there but, in practice, it can never be exercised. The British King, for instance, cannot under any imaginable circumstances dismiss a cabinet, if it enjoys the confidence of the House of Commons. Similarly, no Governor of a State in India will dare dismiss a Minister. Under the principle of collective responsibility the dismissal of one Minister will mean the dismissal of the Council of Ministers as a whole. Therefore, no Governor is likely to take such a step.

Clause (2) of the Article 163 lays down that if a question arises whether any matter is or is not a matter in respect of which the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. It means that the Governor can take a decision on any matter without even informing the Council of Ministers and issue orders for the execution of it. The Chief Minister of the State might stamp that decision as undemocratic, but it will not be unconstitutional. For the Governor is empowered by the Constitution to act in his discretion. It is also to be noted that the President of India is not empowered to exercise his discretion. "This wide power given to the Governor would enable him to act constitutionally against the wishes of the Council of Ministers and even the Legislature."*

Relations with the State Legislature

The relations of the Council of Ministers with the State Legislature are determined by Article 164, which provides that the Council of Ministers is collectively responsible to the Legislative Assembly of the State. This means that the Ministers can remain in office only so long as they enjoy the confidence of the majority of the members of the Legislature. Besides, the Ministers are accountable to the State Legislature for all the errors of omission and

*Tope T. K. : The Constitution of India ; Pp. 227-28:

commission and can be removed from their office by the Legislative Assembly by a vote of no-confidence, vote of censure, refusing to pass the budget or items thereof, defeating important Government measures, amending Governor's address, adjournment motion etc. etc. The Legislature is thus the maker and unmaker of the Ministries and the Ministers are the servants of the Assembly.

This should not be, however, construed to mean that the Ministers are completely at the mercy of the Legislature. They are the pillars of a party which holds a majority of seats in the Legislative Assembly. With the backing of this majority they can get their legislative proposals carried. If party discipline is strict and the party majority in the Legislature is absolute and clear, the Ministers may even use the Legislature merely as a registering body. It is only if the majority commanded by a Ministry is precarious or undependable or, if there is a serious split in the party ranks, that the Legislature will be able to dislodge the Ministry from its 'gaddi'.

Relations with the Permanent Services

Nothing has been mentioned in the Constitution regarding the relations between the Ministers and the permanent services. The Ministers formulate the policy and supervise the general administration. The civil servants carry out the details and day-to-day administration in the light of that policy. Hence, much depends upon the mutual relations of the Ministers and the civil servants. If the Minister is a dominating and intelligent person, the civil servants have to submit. But, in case a Minister is weak-minded or a person of average intelligence, he may be led by the civil servants.

SECTION III

THE STATE LEGISLATURE

The Constitution provides for a legislature for every State in the Union. But it does not adhere to the principle of bicameralism in the case of all State Legislatures. Only six States of the Union have bicameral legislatures; the remaining twelve have only one House as their Legislature.* Where there are two Houses of the Legislature, the lower is known as the Legislative Assembly and

*The States with bicameral legislatures ■■■ : Andhra, Jammu and Kashmir, Tamilnadu Maharashtra. Mysore, Uttar Pradesh,

the higher as Legislative Council. The States with unicameral legislatures have only Legislative Assembly. The Governor of the State is an integral part of the State Legislature.

Under Article 169 of the Constitution, the Parliament is empowered to abolish by law the existing Legislative Council or to create new ones in those States, which have no second chamber at present. But Parliament can pass such a law only if the Legislative Assembly of the State concerned passes a resolution to that effect supported (i) by a majority of the total membership of the Assembly and also (ii) by a majority of not less than two-thirds of the members of the Assembly present and voting. Any law providing for abolition or creation of a Legislative Council will not be considered as regular amendment to the Constitution for which a special procedure is prescribed.

THE LEGISLATIVE ASSEMBLY

or

VIDHAN SABHA

Composition

As laid down in Article 170 of the Constitution, the Legislative Assembly of a State consists of not more than 500 and not less than 60 members. The actual strength of seats in the different State Assemblies is determined by the Parliament on the basis of the population of the States as ascertained in the preceding census and at the ratio of one representative for every 75,000 of the population. For the purpose of election each State is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is practically the same throughout the State. It is also provided in the Constitution that upon the completion of each decennial census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies will be recast to make the necessary adjustments to meet the variation in population.

The members of the Assembly are directly elected by the citizens on the basis of adult suffrage. There is only one electoral roll in every constituency for elections to the House of People and the State Legislative Assemblies. Communal and special electorates have been abolished. But a number of seats have been reserved in general

constituencies for the Scheduled Castes and the Scheduled Tribes on the basis of their population. This reservation will continue up to 1981. The Anglo-Indians have also been given concession with regard to their nomination to the State Legislatures.

Qualifications for Membership

To be qualified for election to the Legislative Assembly of a State, a candidate (a) must be a citizen of India ; (b) must have completed the minimum age of 25 years at the time of election; (c) must possess such other qualifications as may be laid down by Parliament. In the case of a seat reserved for the Scheduled Castes and Scheduled Tribes of a State, the candidate must be, in addition, a member of any of those Castes and Tribes. It is implied that he must be a registered voter.

Term of the Assembly

The normal life of an Assembly is five years, but it may be dissolved earlier by the Governor. If there is a Proclamation of Emergency in operation, the Parliament by law may extend the said period, not exceeding one year, at a time, and in no case beyond a period of six months after the Proclamation has ceased to operate.

Constituencies (Single-membered and Double-membered)

As already referred to, each State is divided into a number of constituencies for the purpose of election to the Legislative Assembly. Most of these constituencies return one member each, but, where a seat has been reserved for the Scheduled Castes and Tribes, the constituency becomes a double-membered one. In a double membered constituency, each voter has two votes, one for the general seat and the other for the seat reserved for the Scheduled Castes representative.

Officers of the Assembly (Speaker and Deputy Speaker)

The Assembly has two elected officers, the Speaker and Deputy Speaker, to conduct its business. The position of these two officers in the conduct of the business of the House and their powers and functions in the Assembly are respectively the same as those of the Speaker and Deputy Speaker of the House of the People. They may be removed from office by a resolution of the House supported by at least a majority of all the sitting members of the House. They are entitled to such salaries and allowances as may be fixed by the Legislature of the State.

LEGISLATIVE COUNCIL OR VIDHAN PARISHAD

Composition

The Legislative Council is the Upper House of the State Legislature. It comprises not more than one-third of the total number of members in the Legislative Assembly of the State, and in no case less than 40 members. There are five different categories of representatives to the Council and they are taken as follows : (a) nearly one-third of the members of the Council are elected by the members of the Legislative Assembly of the State from amongst persons, who are not members of the Assembly ; (b) nearly one-third by electorates consisting of members of Municipalities District Boards and other local bodies in the State ; (c) one-twelfth by registered teachers of at least 3 years' standing in the State educational institutions, not lower than secondary schools; (d) one-twelfth by registered graduates of more than three years' standing; (e) the remaining members are nominated by the Governor from amongst those who have distinguished themselves in the fields of literature, science, art, co-operative movement and social service.

The election of the first four categories of members is to be held in accordance with the system of proportional representation by means of single transferable vote. Voting is by secret ballot. Parliament is empowered to make any change with regard to the nature of representation detailed above.

Qualifications for Membership

To be qualified for election to the Legislative Council, a person (a) must be a citizen of India ; (b) must be not less than 30 years of age ; (c) must possess such other qualifications as may be laid down by Parliament.

Term of the Council

The Legislative Council, like the Senate of U.S.A. and the Council of States in India, is a permanent body and is not subject to dissolution. One-third of its members retire on the expiry of every second year.

Officers of the Council

The Council has a Chairman and a Vice-Chairman both elected by the Council, and they have the same powers and functions as their counter-parts in the Assembly. They also can be removed

from office by a resolution of the Council supported by a majority of the sitting members in the Council at the time of passing such a resolution. Their salaries and allowances are fixed by the State Legislature.

Privileges of the Members of the State Legislature

Members of the State Legislatures have been granted certain privileges. They have freedom of speech in the Legislature subject to provisions of the Constitution and standing orders of the Legislature. No member of the Legislature is liable to any proceedings in any court of law for anything said by him on the floor of the Legislature or any vote cast by him in the Legislature or in any of its Committees or for any reports published by or under the authority of the Legislature. Members of every State Legislature shall receive such salaries and allowances as may from time to time be determined by the Legislature.

Sessions of the State Legislature

The House or Houses of the State Legislature (as the case may be) are summoned by the Governor. They must be summoned to meet at least twice a year with the *proviso* that six months should not elapse between their last sitting in one session and their first sitting in the next session. The Governor may, subject to the provision, summon the House or Houses to meet from time to time, prorogue them or dissolve the Legislative Assembly. He cannot dissolve the Legislative Council (if the State has one) because it is a permanent House. At the commencement of each session, the Governor addresses the legislative Assembly or in the case of a State having a bicameral legislature, both the Houses assembled together. He may also address either House separately or both Houses together at any time during a session, if he may deem it fit. Besides, he sends messages to either House.

Conduct of business and Quorum of the Houses

All questions at any sitting of the House are determined by a majority of votes of the members present and voting. The Speaker or Chairman or any person acting as such has no right to vote in the first instance. He exercises a casting vote in the case of equality of votes. The quorum necessary to constitute a meeting of a House of the Legislature of a State is fixed at ten members or one-tenth of the total number of members of a House, whichever is greater. If at any time during the meeting of the Legislative Assembly or the Legislative Council there is no quorum, it is the

duty of the person presiding, to adjourn the House or suspend the meeting until there is a quorum. The work of the State Legislature is transacted in the language of the State, or in Hindi or English.

Disqualification of Members

A person is disqualified for being chosen to fill a seat of State Legislature (i) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule. (ii) if he is of unsound mind and stands so declared by a competent court. (iii) if he is an undischarged insolvent, (iv) if he is not a citizen of India. (v) if he is so disqualified by or under any law made by Parliament.

Besides, no person can be a member of both Houses of Legislature. A person, who is chosen as a member of both the Houses, will have to vacate one of the two seats as per law passed by the Legislature in that behalf. If a member remains absent from the meetings of the House for a period of sixty days without the permission of the House, his seat may be declared vacant by the House. A member can resign his seat by writing under his hand to the Speaker or the Chairman as the case may be.

POWERS AND FUNCTIONS OF STATE LEGISLATURES

Legislative Powers

The Legislature of a State is empowered to frame laws on all matters included in the State List. It has also the power to legislate in respect of subjects enumerated in the Concurrent List. Its legislative authority is, however, not unlimited and unfettered under all circumstances. The Constitution imposes certain restrictions on its powers even within its exclusive sphere. In the first place, some State laws cannot be valid unless they are reserved for consideration of the President and are assented to by him.* Secondly, some Bills require the sanction of the President before they are introduced in the State Legislature. Thirdly, Parliament is empowered to legislate with respect to any matter in the State List, if the Council of States declares by a resolution passed by two thirds majority that the subject is of a national importance. Fourthly, while the Proclamation of Emergency is in operation, Parliament gets power to legislate on matters included in the State List. Finally, in case of the failure of the constitutional machinery

*Among such laws are: laws passed by the State Legislature for the acquisition of property, laws in respect of concurrent matters which are repugnant to the earlier legislation of Parliament etc.etc.

in a State, the President can suspend the State Legislature and vest its powers in Parliament.

Financial Powers

The State Legislature also controls the finances of the State. It sanctions money to the Government to enable it to run the administration and to ensure good life of the people. This is done by accepting the grants presented to it by the Government. The State Legislature may pass, reduce or reject the demands for grant but cannot increase them. It is also its duty to find ways and means to meet the budget expenditure. It may accept or reject proposals for taxation and borrowing presented to it by the Government. In a bicameral legislature, the position of the Legislative Assembly is superior to that of the Council in respect of financial matters. No tax can be imposed by the Government without the approval of the Assembly. Excepting the expenditure charged on the Consolidated Fund of the State (which is non-votable) all expenditure must be submitted to the Legislative Assembly in the form of demands for grants.

Control over the Executive

The Constitution introduces parliamentary system of government not only in the Centre but also in the States. This makes the State cabinet, which is the real executive, collectively responsible to the State Legislature, or, to be more accurate, the Legislative Assembly of the State. Thus, the Legislature exercises supervision and control over the Ministry. The latter has to resign if the Legislative Assembly expresses want of confidence in it. Besides, the Legislature can criticise and pull up the Ministry and expose its mistakes in action and policy through questions, budget-debates, adjournment motions etc.

Electoral Functions

The elected members of the Legislative Assembly constitute a part of the electoral college provided for the election of the President of India. The Legislative Assembly also elects the representatives of the State to the *Rajya Sabha* and one-third of the members of their Legislative Council.

Powers with regard to amendment

The State Legislatures have no power to propose any amendment to the Constitution which is the sole right of the Indian Parliament. But there are many provisions (Articles 54 and 55 dealing with the election of President and the manner of his election,

Articles 73 and 162, dealing with the extent of the executive power of the Union and of the States, Articles 124-147, concerning the constitution of the High Courts, etc etc.) in the Constitution, which require for their amendment the concurrence of the State Legislatures, in addition to the special majority in the Parliament. Thus, the State Legislatures also take part in the amendment of the Constitution.

LEGISLATIVE PROCEDURE

The main function of the State Legislature is to pass laws for the successful administration of the State. All laws are introduced or moved in the form of Bills. They become Acts only after they have passed through the prescribed stages and have received the assent of the Governor. The main stages through which a Bill has to pass are : (i) Introduction of the Bill. (ii) Consideration or Second Reading of the Bill. (iii) Third Reading or Passing of the Bill. This procedure is followed alike in both the Houses of the Legislature except in case of Money Bills.

I. Introduction of the Bill

All bills except Money Bills can be introduced in either of the two Houses, if the Legislature is a bicameral one. The member, who wishes to introduce a bill, has to give notice of motion for leave to introduce a bill. Usually no such motion is made in the case of Government Bills which are published in the official Gazette on the direction of the Head of the State. A notice to a motion for leave to introduce must be accompanied by a statement of 'Objects and Reasons' and by a certain number of copies of the bill. In case of a bill not published in the Gazette, the member, who has given notice, asks for leave of the House to introduce the bill, which is usually not opposed. In case the introduction is opposed, the presiding officer may, if he so feels, permit the mover and a member opposing it to make short explanatory statements after which votes are taken. Such bills are published in the Gazette only after leave is given by the House to introduce them.

II. Consideration or Second Reading of the Bill

This stage corresponds to the second reading, committee stage and report stage in the British House of Commons. When a bill has been introduced, any one of the following motions may be made :—

- (i) that the bill be circulated for eliciting public opinion ; or

(ii) that the bill be referred to a Select Committee or to a Joint Select Committee of both the Houses, where are there two Houses, or to a Committee of the whole House ; or

(iii) that the bill be taken up for consideration.

Whatever be the motion, the general principles of the bill are discussed at this stage. No amendments to the clauses of the bill are allowed. Only those amendments can be moved which are related to the motion. For example, if the member in-charge-of the bill moves for consideration of the bill another member may move an amendment saying that it may be referred to a Select Committee.

(i) *Motion for Circulation*

The member-in-charge of the bill may move for circulation of the bill to elicit public opinion, which implies that he himself does not want its immediate consideration. No amendment by any other member can be moved for its consideration immediately, though an amendment to refer it to a Select Committee can be moved. A date is fixed by which the opinions are to be received. After the expiry of such period, a motion may be made for reference of the bill to Select Committee. Motion may, however, again be made for re-circulation.

(ii) *Motion for reference to Select Committee*

The member-in-charge of the bill may move that the bill be referred to a Select Committee. In such a motion the names of the members constituting the Committee for the purpose are also mentioned with their consent. The mover and the Minister-in-charge of the Department are invariably the members of the Select Committee. An amendment to this motion can be made for circulation of the bill or for its reference to Joint Select Committee or Committee of the whole House. When this motion for reference to a Select Committee is made, the general principles of the bill are discussed. No discussion of the clauses is allowed by rules except with reference to the general principle. If this motion is carried, it means the general principles have been accepted and Committee cannot change them. A bill reported back from the Select Committee may be recommitted to a Committee. The Select Committee has authority to consider the bill clause by clause and the amendments relevant to the subject matter of the bill. It can

not go into the question of the principles, nor can it amend the bill in a manner which is opposed to such principles. There is, however, no limitation on the power of the Select Committee to amend a bill in such a way as to make it a new bill altogether provided that the amendments made are within the scope of the bill. In such a case, the bill is republished. The Select Committee may also recommend that the bill should not be proceeded with. The rules of all Legislatures authorise the Select Committee to take expert evidence and hear representatives of special interests affected by the bill. It has to submit its report within 3 months unless the time-limit is otherwise fixed.

The report is then presented to the House. The dissenting members can submit minute of dissent. After the report is presented to the House, the Bill may be recommitted to a Select Committee. There is no limit to such recommitments which may be done as many times as the House pleases.

(iii) Motion for Consideration

When a motion for consideration is accepted without referring the Bill to a Committee or on a report from the Committee, the House considers the Bill clause by clause and any member can propose amendments to the clauses of the Bill. Unlike in England, the Bill may be taken up for consideration without reference to a Committee. The Indian Legislatures in such cases act as a committee of the whole House, since only committees consider the Bill clause by clause. Amendments to clauses are moved and voted upon individually or *en bloc*. The preamble of the Bill is considered after the clauses. Amendments to clauses can be made under the rules and with due notice. It is up to the Presiding Officers to admit amendments to the Bill and allow discussion.

III. Passing the Bill or Third Reading

After the discussion of the report of the Select Committee and consideration and passage of the clauses and preamble of the Bill, a motion is made that the Bill be passed. The debate on such a motion is known as the Third Reading. The debate at this stage is restricted to argument in favour of or against the Bill. Details are not discussed.

Bill Sent to the other House

After completing its journey in one House, the Bill is transmitted to the other in case there are two Chambers (where there

is only one House of Legislature the Bill is sent to the Governor for his assent) Thereafter, any Minister (in case of Government Bills) or any member (in case of private member's Bill) may move for the consideration of the Bill. The Bill passes through the same stages in this House as it did in the previous one. In case it is passed by the other House, the Bill is ready for Governor's assent and becomes law after getting it.

In case the other House does not agree to the Bill, it is sent back to the originating House with proposals for amendment. There is some difference in procedure depending upon whether the originating House is Upper or the Lower House. In case the originating House is the Lower House and the Upper House has amended the Bill, the Lower House may pass the Bill again with amendment made by the Upper House. If the Lower House (i) does not accept the amendments, or (ii) if the Bill passed by the Lower House is rejected by the Upper House or (iii) more than three months elapse from the date on which the Bill was transmitted to the Upper House without being passed, the Lower House may again pass the Bill (with or without amendment) and refer it again to the Upper House for concurrence. If in such cases the Upper House (i) rejects the Bill or, (ii) does not pass it within one month of presentation for the second time or (iii) makes any amendment not acceptable to the Lower House, the Bill is deemed to be passed by both the Houses in the form in which it was passed by the Lower House for the second time. Thus, the Upper House can delay a Bill passed by the Lower House for a maximum period of three months after it has received it for the first time and one month more after its receipt for the second time.

The procedure is different in case the Bill originates with the Upper House and is transmitted to the Lower House. If the Lower House agrees, it passes without any delay. But if the Lower House proposes amendments, the Upper House has to consider those amendments and either pass it or send it back again to the Lower House. The Bill cannot become Law in this case unless and until it is agreed to by both the Houses in the same form. The Upper House has to return the Money Bill within 14 days of its receipt.

Governor's Assent

When a Bill has been passed by the State Legislature (or is deemed to have been passed) it is presented to the Governor for his assent. A Bill becomes law only on receiving his assent. The

Governor may either (i) assent to the Bill or (ii) withhold his assent from the Bill or (iii) return the Bill to the House in which it originated for reconsideration either as a whole or a part thereof and may suggest amendments. The Houses (or House where there is one) must reconsider the Bill in the light of amendments suggested. If the Bill is passed again and presented to the Governor, he is bound to give his assent. Another possibility is that the Governor may reserve a Bill for President's consideration (i) if, in his opinion, the Bill is of such a nature that if it becomes law, it would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fulfil under the Constitution, or (ii) if the Bill relates to a subject in the Concurrent List on which the Parliament has already passed a law. Bills for acquisition of a estate or property also require the assent of the President.

The President may give his assent or may direct the Governor to send back the Bill (which had been reserved for his consideration) for reconsideration by the State Legislature. The Legislature must consider such bills within six months and present to the President for his assent. The President may assent to the Bill or may withhold it. Thus, it is that a Bill passing through all these stages and assented to by the Governor or the President, as the case may be, will become an Act only from the date it is assented to.

Money Bills and Financial Procedure

The Constitution provides that Money Bills can be introduced only in the Legislative Assembly and not in the Legislative Council. Article 199 states that a bill is deemed money bill, if it contains provisions dealing with all or any of the following matters : (a) the imposition, abolition, remission, alteration or regulation of any tax ; (b) the regulation of the borrowing of money (c) the custody of the Consolidated Fund or the Contingency Fund of the State, (d) the appropriation of moneys out of the Consolidated Fund of the State ; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State (f) A Bill providing for imposition of fines or other pecuniary penalties.

If a question arises whether a Bill is a Money Bill or not, the decision of the Speaker in this connection is final. The Money Bill must be accompanied by a certificate to this effect from the Speaker when it is transmitted to the Upper House. This certificate

is final and cannot be questioned. A Money Bill (Art. 199) can be introduced or moved on the recommendation of the Governor. Besides, it can be introduced only in the Legislative Assembly (Art. 207).

A Money Bill passed by the Legislative Assembly is sent to the Legislative Council. The Legislative Council must return it within 14 days of its receipt. The Upper House cannot amend the Money Bill; it can only recommend certain amendments, which may or may not be accepted by the Lower House. If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council. If the Council does not return it within 14 days it will be deemed to have been passed by both the Houses at the expiry of 14 days.

Financial Matters and Procedure

There is a difference between the Money Bill and the Financial Bill. Financial Bill also requires Governor's recommendation but, unlike Money Bill, it can be introduced in either of the two Houses. Secondly, unlike a Money Bill, it needs ordinary legislative procedure for its enactment.

The Budget or annual financial statement of estimated receipts and expenditure in respect of each financial year is presented in each House of the State Legislature on the direction of the Governor. It shows separately the sums charged on the revenues of the State (votable) and the expenditure charged upon the Consolidated Fund of the State (non-votable). Budget is discussed a few days after its presentation, but no votes are taken at this stage. The Budget is considered in three stages in the Lower House viz., (i) presentation and general discussion; (ii) demands for Grants and (iii) appropriation Bill sanctioning the withdrawal of money and its appropriation to the various purposes for which the grants are made.

In presenting the Budget, the Finance Minister considers and gives weight to the suggestions, if any, made by the Estimates Committee. At the time of the presentation of Budget, there is no discussion. It is done a few days later on a date fixed for the purpose. During and after the general discussion no motion is made; no votes are taken and discussion is closed with the reply of the Minister.

After this, the money is asked for as demand for Grant by various Ministers for their respective departments. The form of the motion for demand of Grant by a Minister is that so much money (stating the total amount of the Grant) be granted under Grant No..... To such motions amendments are allowed for the reduction of the amount demanded or to omit or reduce any item in any grant. But no amendment purporting to increase the expenditure can be made. The demands for grants are not made in the Upper House, which is thus at a disadvantage. Such a privilege is exclusively of the Lower House.

The expenditure charged on the Consolidated Fund of State is not votable. It includes salaries of the Governor, Speaker, Judges of High Court, etc. After the other demands for grants have been passed, an Appropriation Bill is moved. This Bill authorises the withdrawal of the total amount of expenditure authorised under demands for grants. The Constitution itself provides that no amendment shall be proposed to any such Bill, which will have the effect of the varying of the amount or altering the destination of any grant. However, amendments may be moved for the circulation of the Bill, for eliciting public opinion or for reference of the Bill to a Select Committee. The Appropriation Bill provides another opportunity for the criticism of the Government policy.

The Appropriation Bill is sent to the Upper House after it has been passed by the Lower House but, like a Money Bill, it can be detained for 14 days only. The powers of the Upper House in respect of Money Bills and Budget are very much limited. The importance of the views of the Upper House depends upon the attention or attendance of the Ministers during the general discussion of the budget there.

RELATIONS BETWEEN THE TWO HOUSES

In the State having a bicameral legislature, the powers of the two chambers are not equal. The Legislative Assembly has a position of pre-eminence and supremacy. It is more popular and powerful. The Upper House or The Council of State is, in consequence, not only a second chamber but also the secondary chamber.

In regard to Money Bills, the position of the Assembly is far superior to that of the Legislative Council. A Money Bill can be introduced only in the Lower House which transmits it for discussion to the Upper House after it has itself passed the bill. The Upper

House has no right to amend a Money Bill. It can only recommend certain amendments to the Lower House. The Lower House may or may not accept the amendments. Moreover, the Upper House is bound to return a Money Bill within 14 days of the receipt of the Bill. If it fails to do so, the Bill is deemed to have been passed by the two Houses after the expiry of 14 days in the form it was passed by the Legislative Assembly. In either case, the Bill is deemed to have been passed by the two Houses in the form it is passed by the Lower House on the second occasion.

Under the Indian Constitution, the Budget is presented to both the Houses. The Legislative Council, therefore, has a right to discuss the budget. But demands for grants are not made in the Upper House, this being the exclusive privilege of the Lower House.

In the case of ordinary bills also the position of the Assembly is far superior to that of the Council. Unlike the Indian Parliament, there is no provision for a joint session of the two Houses of the State Legislature in case of a deadlock. If a Bill introduced and passed in the Assembly is transmitted to the Council and (i) the latter rejects the Bill or (ii) more than three months elapse from the date on which the Bill is laid before the Council without being passed by it, or (iii) the Bill is passed by it with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may again pass the Bill with or without amendments, if any suggested by the Legislative Council, and send it back again to the Council for concurrence. If, after such transmission, the Council (i) rejects the Bill or (ii) does not pass it within one month of receipt for the second time or (iii) makes any amendment not acceptable to the Assembly, the Bill is deemed to have been passed by both the Houses in the form it was passed the second time by the Assembly. Thus, it appears that the will of the Legislative Assembly prevails against that of the Legislative Council in case of a deadlock.

In the case of a Bill originating in the Upper House, the Bill is transmitted to the Lower House after being passed. If the Lower House amends the Bill, it is sent back to the Upper House which may accept those amendments or may send the bill back to the Lower House without accepting the amendments. In such cases, the Bill cannot become law unless and until the Lower House concurs. Here also the will of the Assembly prevails.

Moreover, the Consitution provides for the responsibility of the Council of Ministers to the Legislative Assembly and to not the Upper House. The Legislative Council can only elicit information by asking questions from Ministers and can discuss the policy. But cannot pass vote of no-confidence againt the Counci of Ministers. Thus, the real executive in State is under the control of the Legist lative Assembly and not under the Legislative Council.

The Legislative Assembly can, by two-thirds majority of members present and voting and an absolute majority of total membership, pass a resolution requesting the Union Parliament to create or abolish the Legislative Council.

SECTION IV

THE STATE JUDICIARY

(*The High Court*)

The Indian Constitution provides for a Hight Court in each State. It stands at the head of the State's judicial administration. Though High Courts in India are parts of a single, integrated and hierarchial all-India judcial system, yet they are completely independent judicial institutions. The Supreme Court has no direct administrative control on them, nor are they in any way controlled by the State Legistatures or Executives. Each High Court is also a Court of Record and has power of such a Court including the power to punish for contempt of itself.

COMPOSITION OF THE HIGH COURTS

(i) *Strength of the Judges*

Each High Court consists of a Chief Justice and such other Judges as the President may, from time to time, deem it necessary to appoint. It means that the number of Judges in the State High Courts is neither uniform nor fixed. It varies from court to court and from State to State. The Assam High Court, for instance, has at present only three judges, whereas the strength of the Judges of the Allahabad High Court is more than twenty-five.

(ii) *Appointment of the Judges*

The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and Governor of the State. The procedure for appointing other Judges is the same except that the Chief Justice of the High Court concerned is also consulted. The Constitution also makes provision for the appointment of the Additional or Acting Judges to the High

Courts. The Additional Judges are appointed in order to meet any temporary increase in the work of the Court or to dispose of arrears of accumulated work. Their term does not exceed two years. An Acting Judge is appointed in place of a permanent judge of the High Court, when the latter is away on leave or on some other duty. He acts until the permanent judge has resumed his office.

(iii) Qualifications.

To be eligible for appointment as a Judge of a High Court a person (i) must be a citizen of India, (ii) must have held a judicial office in India for ten years, (iii) must have practised as an advocate of a High Court or of two or more such courts in succession for a similar period.

(iv) Term of office

It was originally provided in the Constitution that the Judges of a High Court will hold office till they attain the age of sixty years. But by the Fifteenth Amendment Act, 1963, their retirement age has been raised from 60 to 62 years. However, a High Court Judge may resign his office earlier by writing under his hand and addressed to the President. He may be removed from his office by the President in the manner provided for the removal of the Judges of the Supreme Court. A Judge of a High Court may be transferred to any other High Court by the President after consultation with the Chief Justice of India. This is provided to enable the President to send a competent and most suited Judge to a particular part of India, where his services are needed in the national interest. It also facilitates the better selection of Judges. Another advantage of this provision is that it keeps the question above state or regional barriers.

Restrictions on Practice after Retirement

In the Constitution as enforced in 1950, the High Court Judges were not allowed legal practice after retirement. That restriction was removed by an amendment in 1956. Now a person, who holds office as a permanent judge at a High Court is not allowed to plead or act in any Court or before any authority in India except the Supreme Court and High Courts other than those in which he was a judge. This provision is intended to safeguard the independence of the High Courts.

Remuneration

The Chief Justice and the other Judges of High Courts are paid monthly salaries of Rs. 4,000 and 3,500 respectively. In addition, they are also entitled to certain allowances and pension after retirement. Their salaries and allowances cannot be varied to their disadvantage after their appointment. Further, their salaries are a charge on the Consolidated Fund of the State which is 'non-votable'.

Jurisdiction of the High Courts

The jurisdiction of the various High Courts under the Constitution is the same as it was before the commencement of the Constitution. This is, however, subject to the provisions of the Constitution and any future law that is to be made by the appropriate legislature. The Constitution has conferred on the High Courts jurisdiction in revenue matters, in exercise of their original jurisdiction. This is a new jurisdiction conferred on the High Courts of India.

The High Courts of India are the highest courts of appeal in both civil and criminal matters in the States. Only in matters of admiralty, probate, matrimonial and contempt of court cases they have original jurisdiction. The Calcutta, Madras and Bombay High Courts, however, have, as before, both appellate and original jurisdictions. In civil cases, their jurisdiction extends to all cases in which the amount involved is more than Rs. 2,000/-. In criminal cases, it extends to cases committed to them by Presidency Magistrates. On the appellate side they entertain appeals in civil and criminal cases from their subordinate courts as well as from their original side.

The jurisdiction of a High Court extends to all cases under state or federal laws. The extent of its jurisdiction is determined (i) by Parliament in relation to matters in the Union and Concurrent List and (ii) by the State Legislature in respect of matters in the State and Concurrent Lists, subject to the provisions of the Constitution. The Court is empowered to make rules of Court, to regulate its sittings, as also the practice at the bar and other matters relevant to its functioning.

Power of the High Courts to Issue Writs (Art. 226)

Under Article 226 of the Constitution every High Court is made the protector of Fundamental Rights (guaranteed under the Indian Constitution) within its territorial jurisdiction. It has been

empowered to issue writs, orders, directions including writs in the nature of *Habeas Corpus*, *Mandamus*, Prohibition, *Quo Warranto* and *Certiorari* or any of them to any person or authority within its territory for the enforcement of the fundamental rights and for any other purpose. By giving this power to the High Courts of India, the Fathers of the Constitution have made rights more real for the citizens. If the protection of Fundamental Rights had been entrusted to the Supreme Court alone, it would not have been possible for many an aggrieved citizen to approach it for the enforcement of the rights, which have been violated. It would be interesting to note that Supreme Court has power to issue writs only for the enforcement of Fundamental Rights. But High Courts can issue writs for other purposes also. Obviously, the power of High Courts in this respect is wider than that of the Supreme Court. According to T. K. Tope, "The object of giving the High Courts power to issue these writs for 'any other purpose' has put them in the same position as the Courts of King's Bench Division in England".*

Power of Superintendence (Art. 227)

Under Article 227 of the Constitution every High Court has the power of superintendence over all courts and tribunals except those dealing with the Armed Forces functioning within its territorial jurisdiction. In the exercise of this power, the High Court may (i) call for return from such courts, (ii) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts, (iii) prescribe forms in which books and accounts shall be kept by the officers of any such courts.

This Article is, in a way, very significant. It has made the High Courts responsible for the entire administration of justice by vesting in them both administrative and judicial superintendence over all lower courts and tribunals. The High Courts have power to correct any decision of a tribunal within their jurisdiction through their power of superintendence. But this power being of extraordinary nature must not be used as a substitute for revisional or appellate powers. The Supreme Court has no similar power *vis-à-vis* the High Courts.

Transfer of cases to High Courts (Art. 228)

The High Court has the power to withdraw cases pending in a subordinate court, if it is satisfied that it involves a substantial

*Tope T. K. : *The Constitution of India* ; P. 257.

question of law as to the interpretation of the Constitution and the determination of it is necessary for the disposal of the case. On such withdrawals to itself, the High Court may decide the case or after determining the question of law may return the case to the original court with a copy of the judgement. The original court shall dispose of the case in conformation to that judgement of the High Court. By vesting this power in the High Courts, the framers of the Constitution have safeguarded against the possible multiplicity of constitutional interpretations at the level of subordinate courts.

Control over Officers and Servants of the High Court (Art. 229)

Under Article 229, every High Court has been ensured a complete control over the members of its staff. The Chief Justice is empowered to appoint officers and servants of the High Court. The Governor may, however, by rule, require the Court to make the appointments in consultation with the State Public Service Commission. The conditions of service of the staff of the High Court are laid down by the Chief Justice or any other judge authorised by him. These rules are subject to the provisions of any law passed by the State Legislature and require the approval of Governor of the State concerned. The rules relating to salaries, allowances, leave etc. also require the approval of the Governor. The power of the Chief Justice to appoint any member of the High Court includes his power to dismiss any such member from the service of the Court. The administrative expenses of the High Court including all salaries and allowances of the officers and servants are charged on the Consolidated Fund of the State.

Subordinate Courts

The Indian Constitution embodies detailed provisions dealing with the subordinate judiciary. It draws a distinction between two categories of subordinate courts, namely, the District Court and others. The appointment of the District Judges is made by the Governor in consultation with the High Court of the State concerned*. A person to be qualified for the post of District Judge should be either an advocate or a pleader of seven years' standing, or an officer in the Union or of the State. The appointment of persons

*The expression 'District judge' includes Judges of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a small Cause Court, Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judges etc.

other than District Judges to the judicial service of the State is made by the Governor in accordance with rules made by him in that behalf after consultation with the High Court and the State Public Service Commission. The practice that exists in most of the States at present is that the selection is made through the competitive examination conducted by the State Public Service Commission. The candidates, fulfilling the qualifications laid down by the Commission, take the examination and those who qualify are given special training before their regular appointment to the service. Thereafter, they come under the superintendence of the High Court in the discharge of their duties.

Under Article 235, the High Court exercises control over the District Courts and the courts subordinate to them in matters of postings, promotion, etc. The Governor is empowered to extend the scope of these provisions. The powers and functions of the subordinate courts are more or less uniform throughout the country. All efforts are being made to effect separation of the judiciary from the executive at the district level.

SECTION V

JAMMU AND KASHMIR

(Its Special Constitutional Position)

Jammu and Kashmir is one of the eighteen states of the Indian Union. But it has a special constitutional status. It has its own separate constitution, separate flag and separate law of citizenship. Besides, the control of Union Government on Jammu and Kashmir is not as effective as it is on the other seventeen states. Rather, Kashmir is the only state of the Indian Union, which can claim to have a truly federal relationship with the Centre.

Delhi Agreement and Art. 370.

The position of Jammu and Kashmir in the Indian Union was settled in what is popularly termed as 'Delhi Agreement' of July 24, 1952. As provided in it.

(a) India was to give a special position and status to Kashmir in the Constitution whereby complete internal autonomy was assured to the State.

(b) The hereditary ruler was to be replaced by a Head of the State, who was to be elected for a term of five years.

(c) Fundamental Rights guaranteed by the Indian Constitution were to apply to Kashmir subject to the provision that they would not encroach upon the programme of law reform.

(d) The jurisdiction of the Supreme Court was to be limited, as regards Kashmir, to inter-State disputes, fundamental rights and to matters of defence, foreign affairs and communications.

(e) Kashmir was to have its own new state flag, though the Union flag was to occupy the supremely distinctive place in the State.

(f) The emergency powers of the President of India were to apply to Kashmir only at the request or with the concurrence of the Government of the State.

Under Article I of the Constitution, the State of Jammu and Kashmir was included among territories comprising the Union of India. Article 370 was devised to determine its constitutional relationship with the Union. As provided in it

(i) The Parliament of India would make laws for Jammu and Kashmir only on those matters in the Union and Concurrent Lists which, in consultation with the Government of the State, were declared by the President to *correspond to items mentioned in the schedule* to the Instrument of Accession. In effect, this meant that (a) no laws passed by Parliament except those relating to only 34 of the 97 items of the Union List were to be enforceable in the State ; (b) so far as Jammu and Kashmir was concerned the Parliament was not to have any residuary legislative jurisdiction. It rested in the State itself ; (c) the laws made by the Parliament on subjects included in the Concurrent List could apply to the said State only with its own concurrence.

(ii) Several provisions of the Constitution relating to Preamble, Citizenship, Fundamental Rights, Directive Principles of State Policy, Services, Trade and Commerce, Emergency Provisions, were declared wholly inapplicable to the said State. The remaining provisions of the Constitution were only partially applicable to it. But these provisions were extended to Jammu and Kashmir at the request and with the consent of the State Government.

Steps to bring Jammu and Kashmir in line with other States

After the State's accession had been ratified in February 1954, the President issued the Constitution (Application to Jammu and Kashmir), Order 1954. It was the first significant step towards the integration of the State with India. As subsequently amended in

1956, 1958, 1959, 1960 and 1961, this Order has carried the process of integration sufficiently farther, though the integration has not yet reached the state of completion. Now many parts of the Constitution (I, II, III, Preamble) are applicable to the state of Jammu and Kashmir with certain exceptions and modifications. The Supreme Court practically exercises the same jurisdiction in Jammu and Kashmir as in other parts of the country. The financial relations as well as the allocation of taxes between the Union and the Jammu and Kashmir state are also the same as those existing between the Union and the other States. Arts. 356 and 357 of the Constitution under which the President can take over the government of a state in case of the failure of constitutional machinery in the state, have also been extended to Jammu and Kashmir. Many more parts of the Constitution (Parts V, XI, XII, XIII) in part or in full have been made applicable to this State. Besides, the designation of the Prime Minister has been changed to Chief Minister and of the Sardar-i-Riyassat to Governor.

The Present Position (Exceptions)

With all that is achieved to bring Jammu and Kashmir in line with other states of India, there remain some exceptions. And on account of these exceptions, this State continues to hold a constitutional position quite different from that of the other States.

1. Under Art. 3 of the Constitution, the Union Parliament can by law alter the boundaries of the other States. But no bill affecting the boundaries of this State can be introduced in Parliament without the concurrence of the state legislature of Jammu and Kashmir.

2. Unlike the other States of the Indian Union, Jammu and Kashmir has its own separate constitution which can be amended by the state legislature alone. Parliament has got nothing to do with its amendment.

3. The State retains exclusive competence in regard to matters relating to industrial and mineral development, the census and company laws (excepting banking, insurance and financial corporation).

4. All matters relating to the constitution and organisation of the State High Court, its powers and jurisdiction, are also within the exclusive competence of the State.

5. The residuary power is vested in the state.

FURTHER READING

1. *T.K. Tope* : The Constitution of India
2. *G. Austin* : The Indian Constitution :
Cornerstone of a Nation.
3. *Bodh Raj Sharma* : The Special Position of Jammu and
Kashmir State in the Indian Constitution
(Article).
4. *Shri Prakasa* : Role and Responsibility of the State
Governor (Article)
5. *C.A.D.* : Vol. VIII.
6. *H.V. Kamath* : 'Should the Office of the Governor be
Abolished ?' (Article).

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Amendment of the Constitution

The Indian Constitution has provided for a simple procedure of its amendment which, however, cannot claim to be easy.* According to Dr. Ivor Jennings it has been "devised to safeguard the basic provisions of the Constitution from hasty change and at the same time to render easy the alteration of its less important provisions and thus to impart a degree of flexibility to it." Its important features may be analysed as under :

Classification of provisions for amendment

For the purpose of amendment, the provisions of the Constitution have been classified into three groups in an ascending order of importance and a different procedure has been prescribed for each group.

(A) *The first category comprises those articles which may be amended by a simple majority in Parliament like an ordinary law. The provisions in this group are few and relatively important. Some of them relate to matters like :*

1. The admission and creation of new States, the reconstitution of existing States, the alteration of their boundaries and names etc. (Articles 3, 4, 5).

2. The acquisition and termination of citizenship (Articles 5—11).

*The term amendment implies such an addition or change within the lines of the original instrument as will affect an improvement or better carry out the purpose for which it was formed.

3. The abolition or establishment of Second Chambers in the States (Article 169).

4. The official language of the Indian Union (Article 343, 345 and 348).

Besides these are included in this category : (a) the Articles 75, 97, 125, 148, 164 (5), 221, (2) which permit amendment of the Second Schedule; (b) Article 100 (3) relating to the parliamentary quorum; (c) Article 105 (3) relating to parliamentary privileges, (d) Article 106 prescribing the salaries and allowances of the members of Parliament ; (e) Article 118 (12) concerning rules of procedure ; (f) Article 120 (2) omitting English as parliamentary language after 15 years, unless Parliament otherwise provides ; (g) Article 124 (1) relating to the number of puisne judges in the Supreme Court ; (h) Article 133 (3) which prevents an appeal from a single judge of High Court to the Supreme Court ; (i) Article 135 which confers certain jurisdiction on the Supreme Court unless Parliament otherwise provides.

(B) *The articles in the second category require for their amendment a special majority in each House of the Parliament.* The articles of this group can be amended if a bill to that effect is passed by (i) a majority of total membership of each House and also by (ii) a majority of not less than two-third members of each House present and voting. The bulk of the constitutional provisions particularly those dealing with the Fundamental Rights and Directive Principles (Parts III and IV) fall in this group. More precisely, all those articles which are not covered by the first and third categories form a part of this group.

(C) *In the third group are embodied those articles which require for their amendment a special majority in Parliament as well as the concurrence of the Legislatures of at least half of the States in the Union.* The procedure of amendment for the articles of this group has been purposely made rigid, because they deal with fundamental matters, where States have important powers under the Constitution and any unilateral amendment by Parliament may vitally affect the fundamental basis of the system built up by the Constitution. The provisions of the Constitution to which this procedure applies are the following :

1. Articles 54, 55, which deal with the election of the President and the manner of his election.

2. Articles 73 and 162, which deal with the extent of the executive power of the Union and of the States.

3. Articles 124-147 (Chapter IV of Part V) dealing with the constitution of the Union Judiciary.

4. Articles 214-232 (Chapter V of Part VI) concerning the constitution of the High Courts in the States.

5. Any of Lists in the Seventh Schedule.

6. Chapter I of Part XI (Articles 245-55) which deals with the distribution of the legislative powers between the Union and the States.

7. The representation of the States in the Parliament (the Fourth Schedule).

8. The provisions dealing with the amendment of the Constitution.

Procedure for amendment

The procedure for amendment is detailed under Article 368 of the Constitution. According to this, an amendment may be initiated only by the introduction of a bill for the purpose in either House. When the Bill is passed in each House by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting, it is presented to the President for his assent. And after the President has given his assent, the Constitution stands amended in accordance with the terms of the Bill. As pointed out earlier, in case of certain amendments ratification by the Legislatures of not less than one half of the States by a resolution to that effect is required before the amendment Bill is presented to the President for his assent.

Comments

A careful and close examination of the procedure of amendment reveals that with a very few exceptions the power to initiate an amendment lies with the Union Parliament. This is in sharp contrast with the American practice which divides the initiative between the Union and the constituent units. But be it noted that the Indian Parliament can only amend the Constitution. It has no power to revise or alter it. Thus, the power of the Indian Parliament in respect of amending the Constitution is not a general power but a restricted one.

Besides, there are some problems relating to the amending process which the Constitution has left unresolved. For instance, while the legislative procedure provides for the resolution of a deadlock when the two Houses of Parliament fail to agree over an ordinary bill, no provision has been specifically made for resolving a similar deadlock, if it occurs over a constitutional amendment.

The Constitution does not specifically state that the President of India is bound to give assent to the bill passed by Parliament for amending the Constitution. Nor is any time-limit prescribed for giving assent to the Bill. According to one interpretation of the Article 368 the President of India may refuse to assent to the bill seeking to amend the Constitution, if he thinks that the party in power has abused its majority in Parliament and has sought to bring about an amendment, which may not be in the interest of the nation, though it may serve the purpose of the party in power. The Constitution contains certain provisions (Art, 249, 250, 253) the application whereof can sweep away all the difficulties involved in the amending process and can even transfer the federal union into a unitary state. Besides, the Constitution prescribes no time-limit within which State Legislatures should ratify or reject an amendment submitted to them. A majority of State Legislatures may, in fact, kill an amendment by taking no action on it. Finally, Ambedkar's view that it is difficult to conceive a simpler method of amending the Constitution is a bold assertion. Of course, it may be said, to the credit of the procedure, that it is not unduly complicated or rigid.

According to N. Srinivasan the fathers of the Constitution should have prescribed an easy method of amendment for the lengthy and detailed Constitution of India. He holds that the double majority that is required for the amendment of the fundamental parts of the Constitution would be very difficult to secure. If the present domination of the Congress were to cease and a multiplicity of parties were to appear in the country and Parliament, the near unanimity that is needed for an amendment of the Constitution would be almost impossible to obtain. If different parties are to be in control of the Governments at the Centre and in the States, the amending process can hardly be made use of.

AMENDMENTS OF THE CONSTITUTION

(1950—1971)

During the past twenty one years of its life the Indian Constitution has been amended twenty four times. Some of its amendments were occasioned by the force of circumstances while some were made to meet the situation created by the adverse decisions of the Supreme Court and some High Courts. A brief account of these amendments is given below :

The First Amendment, 1951

The Constitution of India was adopted in November, 1949 and came into force on January 26, 1950. Its working for some months revealed that the right to freedom of expression, as guaranteed under article 19, was exceptionally wide. It debarred the taking of action against an individual who even advocated murder or other violent actions. The need for clarifying the interpretation of the right of the citizens to practise any profession and to carry on any occupation, trade or business was also realised. Moreover, in many cases the laws passed by the State Legislatures for the abolition of a *Zamindari* were declared *ultra vires* by the Supreme Court. Article 15 of the Constitution was found wanting in so far as it failed to protect adequately the educational and economic interests of the weaker sections of the community like the Scheduled Castes, Scheduled Tribes. In view of these legal flaws detected in the Constitution and the difficulties which were experienced in the working of some of the Fundamental Rights, the need for its amendment became imperative. Hence, on June 10, 1951 by the Constitution (First Amendment) Act 1951, Articles 15, 19, 85, 87, 174, 176, 341, 342, 372, 376 were amended. Besides, this amendment inserted a new article 31-A and added the Ninth Schedule.

This amendment has considerably reduced the amplitude of freedom of speech by subjecting clause (i) of the Article 19 to reasonable restrictions, which may be imposed in the interest of the security of State and friendly relations with foreign countries, public order, decency or morality or on the ground of incitement to an offence. It has also amended Article 15 in the interest of educationally and economically backward classes. Article 31A has placed the *Zamindari* abolition laws beyond challenge in the Courts. Minor amendments have been made in the other aforesaid Articles also.

The Second Amendment, 1952

The Constitution in its original provisions provided that a member of the House of People should represent a population of not less than 5 lakhs and not more than $7\frac{1}{2}$ lakhs. It was also laid down that the maximum number of elected members to the House should not exceed 500. But it was soon found that these limits could not be adhered to in practice in the light of actual size of the country's growing population. Hence, by the Second Amendment the upper limit was waived.

The Third Amendment, 1954

Under Article 369 of the Constitution the Parliament was empowered to legislate in respect of certain essential commodities up to January 1955. The continued control over some of them was considered desirable. Consequently, the Constitution was amended in 1954. This amendment extended the scope of control by the Union Government, in case Parliament may by law vest this power, in case of any industry, food stuffs, cattle's fodder, raw cotton and raw jute.

The Fourth Amendment, 1955

The object of this amendment was to remove laws relating to the abolition of Zamindari and also other items of agrarian and social welfare legislation which affect proprietary rights altogether from the purview of Articles 14, 19 and 31. Hence, it had been provided by the Constitution (Fourth Amendment) Act 1955 that

(a) the Legislature will be the final arbiter in fixing the amount of compensation, and the inadequacy of the compensation shall not be called into question in a court of law. Evidently, an individual shall have no legal remedy even though he is not paid full monetary equivalent of the property taken from him.

(b) the deprivation of property unaccompanied by any transfer of ownership or right to possession of such property will not amount to compulsory acquisition or requisition of the property.

The Fifth Amendment, 1955

Under Article 3 of the Constitution the Parliament was empowered to form a new State or alter the area, boundaries or name of any State. But the Bill for the purpose could not be introduced

in the Parliament unless the views of the State Legislatures concerned were ascertained by the President. Besides, the Constitution did not put a time-limit within which the States were to express their views on any proposal for reorganisation referred to them under Article 3. By the Fifth Amendment, 1955 the President has been empowered to fix a time-limit by which the States are to communicate their views to the Centre before any Bill for the purpose could be introduced in Parliament. If within the period so specified by the President a State does not express its views, the Bill may be introduced even though the views of the State have not been ascertained by the President.

The Sixth Amendment, 1956

By this amendment the taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce, have been included in the Union List. In consequence, Articles 269 and 286 have been amended.

The Seventh Amendment, 1956

The Constitution (Seventh Amendment) Act, 1956 was enacted to implement the scheme of states reorganisation as envisaged by the States Reorganisation Act, 1956 and the Bihar and West Bengal (Transfer of Territories) Act, 1956. It has amended Articles 1, 131, 153, 168, 216, 220, 298 and 371, and has substituted new articles viz. 170, 230, 231 and 232. This amendment has revised the First and Fourth Schedules and has also amended part III of the Constitution. Besides, new articles 350 (A) and 350 (B) were designed to implement the recommendations of the States Reorganisation Commission with regard to safeguards for linguistic minorities. Article 258 (A) has also been inserted into the Constitution to remove the defects in Article 258 (1).

The Eighth Amendment, 1959

This Amendment has extended the period of reservation of seats in legislatures for members of the Scheduled Castes and Scheduled Tribes by another ten years.

The Ninth Amendment, 1960

The amendment provided for the transfer of certain territories of India to Pakistan under an agreement between India and

Pakistan as a part of a comprehensive settlement of broader disputes between the two countries.

The Tenth Amendment Act, 1961

By this amendment the seventh Union Territory of Dadra and Nagar Haveli (former Portuguese possessions) was created.

The Eleventh Amendment Act, 1961

This amendment provided that (i) the election of the President will not be invalid if the election of members to the Electoral College is not complete, (ii) the joint sitting of both the Houses of the Parliament is not necessary for the election of the Vice-President, but election can be held by ballot.

The Twelfth Amendment, 1961

By this amendment Goa, Daman and Diu were merged into India and were constituted into the eighth Union Territory. Two seats were allotted to it in the Parliament and the jurisdiction of Bombay High Court was extended to her.

The Thirteenth Amendment, 1962

Nagaland was created the 17th State of the Indian Union. There was to be a common Governor for both Assam and Nagaland. Special regulations were framed for the administration of Tuensang.

The Fourteenth Amendment, 1962

This amendment provided for the admission of Pondicherry to the Union, giving it the ninth place in the list of the Union Territories in the First Schedule. It also enabled the Parliament to provide elected legislatures and Councils of Ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry.

The Fifteenth Amendment, 1963

By this amendment the retirement age of the judges of High Courts was raised from 60 to 62. Besides, Article 311 of the Constitution was amended to shorten the procedure for disciplinary action to be taken against government employees.

The Sixteenth Amendment, 1963

It has amended article 19 to enable the State to make any law imposing reasonable restrictions on the exercise of right of freedom of speech and expression, of assembly and of forming associations or unions in the interest of sovereignty and integrity of the country.

The Seventeenth Amendment, 1963

It has enlarged the definition of estate in Art 31—A and has amended the Ninth Schedule to the Constitution by including therein 44 more state enactments relating to land reform.

The Eighteenth Amendment, 1966

It provided for the creation of the States of Punjab and Haryana and constitution of Chandigarh as a Union territory.

The Nineteenth Amendment, 1966

It ammended clause (1) of Article 324 for abolition of the provisions relating to the appointment of election tribunals for the decisions of disputes and doubts arising out of or in connection with elections to Parliament and to the State Legislatures.

The Twentieth Amendment, 1967

It amended Article 233 by adding new Article 233—A in order to validate the appointment of certain District judges in some states of India.

The Twenty-first Amendment, 1967

It added Sindhi to the list of national languages contained in the Eighth Schedule to the Constitution.

The Twenty-second Amendment, 1969

It empowered the Parliament to form within the state of Assam an autonomous state comprising certain tribal areas in Assam and create a local Legislature or Council of Ministers or both for that autonomous state.

The Twenty-third Amendment, 1969

By it the period of the reservation of seats for Scheduled Castes and Tribes in the *Lok Sabha* and State Legislative Assemblies has been extended up January 26, 1980. It has also provided for the continuance of representation of the Anglo-Indian community by nomination for another ten years.

The Twenty-Fourth Amendment, 1971

The Parliament has passed the 24th Constitution Amendment Bill in August, 1971. It seeks to nullify the effect of the Supreme Court's judgement in the Golaknath case and reasserts Parliament's right to amend Fundamental Rights.

Comments -

The rapid succession of amendments to the Constitution is often subjected to severe criticism. It is emphatically pointed out that the Constitution is a sacred law of the land. It should not be made so cheap as to admit of amendment so quickly and easily. No doubt, the Constitution is a sacred document and frequent amendments are undesirable but human life is more sacred than the Constitution. Hence, any amendment that is necessary for maintaining the sacredness and dignity of human life must be accepted. Besides, the critics should not ignore the compelling circumstances which have led to these constitutional amendments.

FURTHER READING

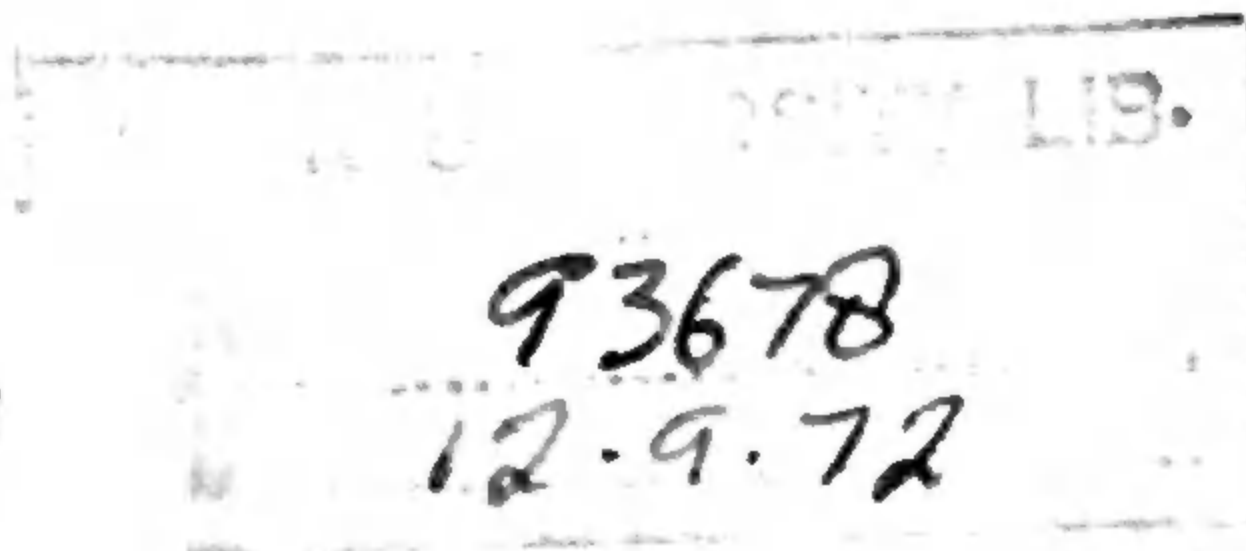
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